



Costs Decision

Site visit made on 14 June 2017

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4th July 2017

Costs application in relation to Appeal Ref: APP/N1920/W/17/3172011 Kendals Cottage, Loom Lane, Radlett, Hertfordshire WD7 8BP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Stephen Balsam for a full award of costs against Hertsmere Borough Council.
 - The appeal was against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted for the retention of existing dwelling granted planning permission under application 15/0356/FUL to include two single storey rear extensions without complying with a condition attached to planning permission Ref 16/0904/FUL, dated 5 August 2016.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. It also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
4. There appears to be four key elements to the applicant's claim. The first is that the Council have referred to incorrect policies in their reasons for refusal and misinterpreted the nature of the development; the second that they have not been positive and proactive in their approach to handling the application; thirdly they have not fully justified their reasons for refusal and finally they have not apportioned sufficient weight to the existence of other gates and piers, submitted crime statistics or the degree of cover provided by the more mature frontage vegetation.
5. As part of the Council's evidence, they have set out an explanation as to the discrepancy between the policies that have been referred to on the decision

notice and subsequently in their comments. It is the case that they were renumbered following the adoption of the SADMPP¹ which occurred during the appeal process. An explanation on this is clear and was made at an early stage in proceedings. The relevance of other policies, such as the ones with regard to development in the Green Belt, is applicable based on the Council's opinion of the nature of the development. An opinion which the applicant clearly disagrees with. I have provided some further clarity on this matter in a separate decision, as well as my views on the relevance of other quoted policies.

6. On my understanding of the evidence, and allowing for the minor alterations to the adopted version of the SADMPP, I cannot see that the quoted policies have confused the focus of the Council's argument and the applicant was fully aware of the crux of the Council's case for refusing planning permission.
7. The Council also state why they consider the gates and piers to be a building operation when the applicant suggests they are an engineering operation. Each party refers to primary legislation and the Framework to support their case. My own opinion on this matter aside which is set out by a separate decision, this is again a case of conflicting opinions which is arguably par for the course in a planning appeal situation.
8. I can see that there are areas in the process of the planning application itself that the Council could have been more positive but this has to be placed in the context of their views of the development which, for the reasons given, they had a clear resistance to. This was clear not only from the time the application was dealt with, but also from the detailed planning history which the applicant was equally well aware of during the time the application was under consideration. As far as I can see, the fact that the application was refused should not have come as a surprise.
9. I am unable to agree with the applicant that the Council have not substantiated their reasons for refusal. The decision notice is brief but makes clear the main issues and how they result in conflict with the development plan. Read alongside the delegated officer report and the further information provided in the Council's appeal statement, the applicant would have been armed with more than sufficient detail to understand their stance and respond accordingly.
10. On the issue of weight, this is always a matter for the decision maker. It is in this context that the applicant has referred to the additional crime data, other examples of gates and further growth of the planting on the front boundary that was advanced with their grounds of appeal. Whilst the Council have not been explicit on the amount of weight that they have apportioned to these three arguments, they have been sufficiently clear that they have taken them into account. It is clear to me from the cases that this evidence was not ignored as contended.
11. In the case of crime specifically, I accept that a previous Inspector looking at the appeal site did state that they did not have access to statistics to be able to form a conclusive view on the need for the gates. This should not be taken to mean however that should statistics have been available, they would have ascribed weight to them to the extent that the need for them would have outweighed the harm they caused. The Inspector was clear that they caused

¹ Hertsmere Local Plan Site Allocations and Development Management Policies Plan 2016

harm and in all that is fair it would be impossible to be certain of what their findings would have been had they seen said statistics.

12. Taking all of the above matters into account, I do not consider the Council's conduct has amounted to unreasonable behaviour. Unnecessary expense during the appeal process has not been demonstrated and as such an award of costs is not justified.

John Morrison

INSPECTOR