



Costs Decision

Site visit made on 21 November 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 14th December 2017

**Costs application in relation to Appeal Ref: APP/J2210/W/17/3181975
Tyler Court, land at the rear of 121a Sturry Road, Canterbury,
Kent CT1 1DA**

- 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 Roberts Abbott Properties for a full award of costs against Canterbury City Council.
 - The appeal was against the refusal of planning permission for two-storey building for student accommodation (2 x 1 bed studio apartments).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Both the above tests must be satisfied for an award of costs to be made.
3. The Council took over 15 months to determine this application and it is evident that there was considerable correspondence between the parties during this period of which a sample has been provided. However, this does not alter my view that the decision should have been based on the revised plans submitted well in advance and showing the revised red line plan which incorporated the refuse and cycle storage at the rear of the site.
4. The Council has not substantiated any harm resulting from the refuse and cycle stores being located as shown in the amended plans submitted. The decision makes no reference to any adverse impacts of the refuse and cycle stores being in close proximity to neighbouring residential occupiers. The Inspector in the previous appeals had also not argued that the rear gardens of the houses on Sturry Road were substandard in terms of amenity space for family accommodation but stated in his decision that these were not 'so small as to be harmful to living conditions'¹. Therefore the harm resulting from the refuse and cycle stores occupying land that might be restored as garden space is inaccurately reported.

¹ Appeal decisions APP/J2210/A/09/2100386 & APP/J2210/A/09/2100389

5. Paragraph 49 of the PPG² gives examples of what types of behaviour may give rise to a substantive award against a local planning authority. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
6. The Council had based its decision on the wrong plans which had been superseded to provide adequate provision for both cycle and refuse facilities. Consequently, as the reason for the decision was solely over the lack of such provision, the Council can be considered as having prevented or delayed a development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The Council's subsequent appeal statement then in my view fails to produce the evidence I consider adequate to substantiate its reason for refusal and includes somewhat vague assertions about the proposal's impacts.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Canterbury City Council shall pay to Roberts Abbott Properties the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Canterbury City Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Price

INSPECTOR

² Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014