
Costs Decision

Site visit made on 30 July 2019

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State.

Decision date: Friday, 16 August 2019

Costs application in relation to Appeal Ref: APP/V1505/W/19/3229550 39 Jersey Gardens, Wickford SS11 7AG

- 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 Merrington (LAA Brown Ltd) for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of planning permission for a proposed new dwelling to rear of 39 Jersey Gardens.
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Decision

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

Reasons

2. Planning Policy 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. A full award of costs has been sought on the grounds that the development should have been approved and therefore the requirement to submit an appeal should have been unnecessary. The basis for the claim is that a planning permission at an adjacent site and the comments of an Inspector in respect of another adjacent proposal should have led to the granting of planning permission. It is also stated that the decision was made without recourse to paragraph 11 of the National Planning Policy Framework and the presumption in favour of sustainable development. Furthermore, it has been stated that an incorrect comment in relation to garden sizes led to the proposal being incorrectly assessed.
4. The appellant also considers that by not providing an appeal statement, given that the decision was reached contrary to the advice of the council's officers, inadequate reasoning of the decision has been provided to support the refusal. It is also suggested that greater regard should have been had to the fact that amendments had been made during the course of the application.
5. In response the council has stated that there is no requirement for Members to reach the same conclusion as Officers as they can apply weight to material considerations differently. The council state that they are not obliged to submit an appeal statement and that it was not necessary as the decision notice and the minutes of the committee meeting were adequate to understand the reasoning for the decision. It has also been stated that the committee report

clearly highlights the presumption in favour of sustainable development and that the plans were available to the Members and therefore they were not wholly reliant on the advice of officers when considering the proposal.

6. I have had particular regard to the transcript of the council committee meeting at which the application was considered, which has been provided by the applicant. This demonstrates that a discussion occurred in relation to the neighbouring site and the circumstances that led to a planning permission being granted at that site. Whilst that planning permission is a material consideration that I have afforded significant weight, the amount of weight to be applied is a matter for the decision maker and as such the council did not act unreasonably by deciding to give this matter less weight.
7. The transcript also demonstrates that consideration was given to the adequacy of the garden, with reference being made to the different parts of the garden that are to the side and rear of the dwelling. The evidence before me indicates that this consideration was in the context of the spaciousness of the plot as the application was not refused on the grounds of the size of the garden. This was not an unreasonable consideration to have and as such I do not consider that the comments made led to the unreasonable refusal of the application.
8. Although the council has not expanded upon its case during the appeal process, this has not prevented the applicant producing a detailed appeal statement which shows an understanding of the relevant issues. As such, through the decision notice and the availability of a transcript of the relevant committee meeting, I find that the applicant has been able to be clear on the main issues.
9. Furthermore, the transcript submitted by the applicant indicates that 'the presumption' was discussed. It appears that the phrasing may not have been entirely in accordance with the Framework, but it does show that it was a consideration. As the intended reader of the report to the Planning Committee can be expected to have some knowledge of the Framework, I do not find that it needs to be explicitly referenced in the report in all circumstances and, as demonstrated by the transcript, regard was had to the relevant paragraph.
10. Finally, whilst it is noted that amendments were made to the scheme during the application process, the development should be considered on its planning merits rather than the conduct of the parties.

Conclusion

11. As a result of the above it follows that I do not agree that the Council has acted unreasonably in this case. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Ian Harrison

INSPECTOR