



Costs Decision

Site visit made on 26 July 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2019

Costs application in relation to Appeal Ref: APP/Z1510/W/18/3212375 Land rear of 51-57 Newland Street, Witham CM8 2BD

- 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 Peter McKinlay, Bascule Properties Ltd for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for 6 x 1 bed dwellings within courtyard development and 1 flat over garage with associated parking to the rear patio area of the Spread Eagle Public House.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The applicant claims that the Council was unreasonable in refusing a development that clearly should have been permitted having regard to its accordance with the development plan, national policy and other material considerations; and that its negative approach in assessing the proposal misled its planning balance.
 4. I appreciate that the outcome of the application may have been a disappointment to the appellant. However, the Council identified in detail the shortcomings of the scheme against the development plan and national planning policy, findings which for the most part, I shared in my assessment. My view was that the development constraints of the site justified a degree of flexibility in applying the standards. In my balance, the positive factors of the scheme's central location, the overall standard of accommodation, and the sense of place that the future occupiers would experience, outweighed the amenity shortcomings, without even considering the wider benefits of the development.
 5. I agree that the Council's consideration of the living conditions within the buildings was rigid, but it was a matter for its judgement to assess the degree of harm, which it concluded was significant against a number of measures. It acknowledged the location of the site and the constraints of its setting warranted a degree of flexibility in applying its parking and garden standards. However, it reached a balanced conclusion on the overall effect on living
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conditions. It also balanced its conclusion on living conditions against the heritage benefits of the proposal as well as the three dimensions of sustainable development. It is clear that the Council considered a development of fewer dwellings may have overcome its findings of harm. However, its findings and its balance against the scheme in the application were not unreasonable.

Conclusion

6. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not therefore justified.

Patrick Whelan

INSPECTOR