
Costs Decision

Site visit made on 13 August 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Costs application in relation to Appeal Ref: APP/D5120/W/19/3230529 106 Bexley Road, Erith DA8 3SP

- 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 P Kang for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal of planning permission for alterations and extensions to existing building to provide 13 apartments comprising 4 x 1 bed and 9 x 2 bed units with associated parking and amenity space.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 046¹ of the PPG advises that examples of behaviour that may give rise to a procedural award against a local planning authority could include a lack of co-operation with the other party. Paragraph 049² advises that a local planning authority could be at risk of a substantive award where they have failed to produce evidence to substantiate each reason for refusal, or not determining similar cases in a consistent manner.
3. The applicant states that the Council has not worked proactively with them, as they made a demand for a commitment to a financial contribution in lieu of the on-site provision of affordable housing, at a late stage during the consideration of the application, and gave the applicant an unreasonably short deadline to respond. The Council states that the request had been made previously and has provided a copy of correspondence which demonstrates this. I have seen no evidence that the Council behaved unreasonably in this regard. Moreover, the applicant did not agree to the request, and therefore the appeal could not have been avoided. As a result, no unnecessary or wasted expense has been incurred.
4. The applicant states that the reason for refusal was not substantiated as the proposal was compliant with the development plan and the Council did not make any reference to the submitted Unilateral Undertaking (UU) in its evidence. However, the Council has also provided evidence to substantiate the

¹ Paragraph: 046 Reference ID: 16-046-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

reason for refusal based on the requirement in paragraph 64 of the National Planning Policy Framework (the Framework) for the provision of affordable housing. They have explained their interpretation of the paragraph and have provided evidence regarding the need for affordable housing. The Council has also provided comments on the UU. I am therefore satisfied that they have substantiated the reason for refusal.

5. In terms of the consistency of decision making, the applicant refers to an appeal³ in the same Borough, where the Council withdrew a reason for refusal relating to the provision of affordable housing, after accepting the findings of a viability report that concluded that an off-site contribution would render the development unviable.
6. The Council states that the case is not comparable as there was no justification for the reason for refusal, which predates the revision of the Framework to include the provisions of paragraph 64. The cases are materially different and it is not the case that the Council has considered similar applications in an inconsistent manner.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

N Thomas

INSPECTOR

³ APP/D5120/W/18/3202556