



Costs Decision

Site visit made on 15 October 2019

by J E Jolly BA (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Costs application in relation to Appeal Ref: APP/E2205/W/19/3233670 87 Canterbury Road, Willesborough TN24 0BH

- 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 RR Group for a full award of costs against Ashford Borough Council.
 - The appeal was against the refusal of an application for the development of two new semi-detached dwellings to the rear of No. 87 and 89 Canterbury Road, Willesborough, Ashford TN24 0BH.
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Decision

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

Procedural Matters

2. Since the date that the application was decided the Council has adopted the Ashford Borough Council Ashford Local Plan February 2019 (ALP). I have therefore determined the appeal in accordance with the up to date development plan.

Reasons

3. Paragraph 30 of the national Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The applicant states three grounds for the application; inconsistent decision making, a failure to substantiate the reasons for refusal and the prevention of a development which clearly should have been permitted.
5. The applicant contends that the planning approval related to the rear of 83 Canterbury Road (19/00725/AS) is a similar proposal to the one in front of me, and as such demonstrates a contradictory approach in the application of the Development Plan. This is rebutted by the Council who maintain that the application was for a detached dwelling and therefore materially different. Nonetheless, in the context of the tight urban grain and in consideration of the character and appearance of the area, I find that the proposal is indeed similar due to its' adherence to the prevailing pattern of development, which includes 83 Canterbury Road.

6. Further, in respect of the living conditions related to privacy and amenity space the Council has failed to read the Development Plan as a whole, and applied Policy HOU15 of the ALP in an incomplete way. The Council state that the proposed dwellings fail to meet the requirements for a garden depth set out in the aforesaid Policy but do not go on to mention that the policy can be flexible. Whilst I note the desired depth and width requirements for private external open space set out in the above Policy, the inability of the Council to acknowledge and then apply the standard flexibly in respect of this depth is unreasonable as there is sufficient space to carry out the normal activities associated with such a space as stated in my Decision.
7. In this respect, the Council has acted unreasonably by not applying the adopted policy fairly. As such, the applicant has found it necessary to go through the appeal process and this has resulted in unnecessary and wasted expense.
8. I note the applicants concerns in that they consider that the Council did not substantiate their reasons for refusal. However, it is clear from the evidence presented to me that the main parties have sought to substantiate their cases. In this respect the Council has not been unreasonable. Nonetheless, the Council has been inconsistent in its' decision making and in doing so may have prevented a development that should have been permitted.
9. Accordingly, the Council has acted unreasonably and caused the applicant to submit the appeal resulting in the applicant incurring unnecessary and wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described by the national Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Ashford Borough Council shall pay to Mr Rob Cowen (RR Group), the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Ashford Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J E JOLLY

INSPECTOR