
Costs Decision

Hearing held on 15 October 2019

Site visit made on 15 October 2019

by Jonathon Parsons MSc BSc DipTP (Cert Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Costs application in relation to Appeal Ref: APP/H1515/W/19/3231149 Ardleigh Court, Hutton Road, Shenfield CM15 8LZ

- 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 Greg Cooper (Metropolis) for a full award of costs against M.C.C. Developments Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of additional storey of accommodation to provide 14 units of accommodation.
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Decision

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

Procedural Matters

2. An award of costs is submitted on the behalf of residents against the appellant. The Guidance indicates that it is not anticipated that an award of costs will be made in favour of, or against, other interested parties, other than in exceptional circumstances. An award will not be made in favour of, or against interested parties, where a finding of unreasonable behaviour by one of the principal parties relates to the merits of the appeal. However, an award may be made in favour of, against, an interested party on procedural grounds, for example where an appeal has withdrawn without good reason or where an unnecessary adjournment of a hearing or inquiry is caused by unreasonable conduct.

The submissions for Greg Cooper (Metropolis)

3. The unreasonable behaviour is procedural and substantive. The appellant has submitted an application and pursued it to appeal with inadequate information to allow it to be understood, interpreted and controlled. No full sections of the proposed buildings and no information to allow the new building to be readily compared to its context, or to the previous schemes, have been provided which are a material consideration. Numerous sections were prepared as a part of the last application and appeal. The appellant provided a comparison with the preceding scheme in the previous submission. The appellant has all the necessary information and therefore, this is a conscious decision. This has forced third parties to undertake additional work themselves in presenting their case.

4. The appellant has behaved unreasonably by pursuing an appeal for the third time with a proposal that would be a 'no hoper'. No case has been attempted to advance a clear and convincing justification that would allow an Inspector to reach a different conclusion to the previous two appeal decisions. Planning Practice Guidance (the Guidance) gives examples of unreasonable behaviour. One such example is where an appeal follows a recent appeal decision in the respect of the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed.
5. In the second appeal, the appellant advanced the lowest possible profile for the extra storey and had it rejected as unacceptably intrusive and dominant. Taken together, an objective assessment of the two appeal decisions gives a very strong indication that the problem is the additional storey and not its design or shape. Consistency of decision-making is a key planning principle of the planning system. After the last appeal decision, everyone was convinced that an additional storey could not be considered again. The lack of information and the submission of a proposal within the context of two previous appeal decisions is procedural and provides justification for exceptional circumstances under the Guidance.

The response by M.C.C. Developments

6. Under the Guidance, an award of costs is not anticipated in a favour of a third party against an appellant other than in exceptional circumstances. This is a high hurdle to be passed. At the appeal, all the issues focused on the substantive merits of the proposal and not procedural issues.
7. Even if the appellant was wrong in this assessment, planning circumstances have changed since the earlier appeal decisions. Changes in the planning proposal's design and the introduction of National Planning Policy Framework (the Framework) render the submission perfectly reasonable. In arguing that the award of costs is based on procedural grounds, the applicant is misunderstanding the meaning of procedural. The arguments being put forward about the appeal history of the site rendering the issue procedural is incorrect. The merits of the proposal are what the applicant is asking the Inspector to consider as the justification for the award of costs, and therefore, the cost submission does not meet the requirements of the Guidance.

Reasons

8. The Guidance 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.
9. The Guidance is clear that procedural matters are the only matters that can be considered in a third party claim for costs and that exceptional circumstances must be proven. In the cost submission, the arguments put forward by the applicant have mainly focussed on the merits of the proposal which could not reasonably be assessed as relating to the procedural matters of appeal. The exception is the lack of information on cross-sections and context, especially with reference to previous appeal decisions. However, the appellant submitted full elevation, layout and site plans. Additionally, a typical cross-section plan of the upper storey accommodation was submitted. Based on this, there was no

undue impediment or unnecessary additional time incurred on third parties (or the Council) in presenting their case.

10. Notwithstanding this, there is clearly a change in planning circumstance since the last appeals. The design of the proposal is different to the previous schemes. Whilst design was still an important planning consideration in the terms of planning policy under the previous schemes, the Framework places an emphasis on boosting housing supply and introduces the mechanism of the presumption in favour of sustainable development for example.

Conclusion

11. For the reasons given above, I conclude that the appellant has not behaved unreasonably or caused unnecessary expense, as described in the PPG. Consequently, an application for an award of costs is not justified.

Jonathon Parsons

INSPECTOR