
Costs Decision

Site visit made on 11 November 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2019

Costs application in relation to Appeal Ref: APP/K2230/W/19/3231636 The Three Crutches, Old Watling Street, Higham, Rochester ME2 3UG

- 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 Punch Partnerships (PML) Ltd for a full award of costs against Gravesham Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 1no. four-bedroom dwelling with associated access, parking and landscaping, and reconfiguration of public house car park.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. It is alleged that the Council did not make its Officer Report publicly available before the appeal was lodged. The Council suggest that these are available upon request. There is no indication that the applicant sought to obtain a copy of the report to assist the preparation of their case. Whilst the availability of Officer Reports online is no doubt beneficial, the Council is not obligated to do so. Therefore, the Council has not acted unreasonably in this regard.
4. Following the receipt of the appeal, the Council chose not to produce a separate statement and instead relied on the Officer Report to demonstrate their case. The appeal process allows the Council to adopt such an approach. However, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence substantiating that reasoning. Any such case must be fully justified in the face of opposing evidence.
5. In respect of the Council's first reason for refusal, the applicant states that the Council did not have regard to the effect of the approved development¹, to the north of the appeal site, on views of the fields beyond the site. Similarly, the applicant suggests that the Council also failed to have regard to the size of the proposal in relation to the approved development.

¹ Planning Reference: 20181094

6. The reason for the refusal on the decision notice is complete, precise, specific and relevant to the application and clearly states the policies of the Core Strategy² the proposal would conflict with. The Officer Report also provided analysis of the effect of the proposed development on the character of the built, historic and natural environment, using the evidence submitted by the appellant, the Council's observations and those of their consultees, including Design South East.
7. The Officer Report clearly references the approved development, particularly in terms of the scale of the proposal and the topography of the site, and the proposal would have a different relationship with Old Watling Street to the approved development. It also refers to the omission of a dwelling, located on the appeal site, from the approved development and the views available by virtue of the site. Therefore, although the Council may have arrived at a different conclusion to the applicant, it has not acted unreasonably in this regard.
8. The applicant also alleges that the Council did not provide any evidence to demonstrate that a lower affordable housing threshold would be applicable to the proposed development.
9. The Council failed to produce the correct evidence to demonstrate that the Parish of Higham is a Designated Rural Area³ until late in the appeal process. However, this confirmed that the lower threshold for affordable housing in rural areas set out in Policy CS16 of the Core Strategy would apply to the Parish of Higham.
10. The Council's Officer Report suggested that the wording of the policy enabled the consideration of multiple sites and that these could be assembled in order to meet the affordable housing threshold for sites of three or more units. However, there is no support in the policy for such an approach and the proposal is for a single dwelling. The Council did not therefore have grounds to apply the policy, which would constitute unreasonable behaviour.
11. As such, the aspect of the appeal relating to the provision of affordable housing (the third reason for refusal) was unnecessary and the preparation of evidence to support the appeal is likely to have led to unnecessary expense.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 Gravesham Borough Council shall pay to Punch Partnerships (PML) Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's third reason for refusal, which concerned alleged conflict with Policy CS16 of the Core Strategy and Paragraph 63 of the Framework.

² The Gravesham Local Plan Core Strategy Adopted September 2014.

³ As referred to in Paragraph 63 of the National Planning Policy Framework (the Framework).

14. The applicant is now invited to submit to Gravesham 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, the costs shall be assessed by the Senior Courts Costs Office.

Paul Thompson

INSPECTOR