



Costs Decision

Site visit made on 5 November 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Costs application in relation to Appeal Ref: APP/M5450/W/19/3235784 Land to the rear of 49 Roxborough Park, Harrow HA1 3BA

- 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 Mrs M Whitely for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the refusal of planning permission for a new dwelling following demolition of shed outbuilding.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, Paragraph 030 of the National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant highlights that the pre-planning enquiry provided good positive advice from the Council, and that the issue of the application site being 'garden land' was never mentioned or raised as a potential problem, but the application was subsequently refused. It is contended that if the pre-planning advice had been negative in any way the applicant would not have gone to the time and considerable cost in pursuing a full application.
4. It is clear that in its pre-application response of 18 April 2018, the Council states that 'the principle of development on this site has already been established, therefore there is no presumption against the proposal as a garden land development.' Despite this, the Council refused the application for that reason.
5. I acknowledge that this advice was not consistent with the final decision of the Council. However, informal advice provided before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors. Indeed, I note that the pre-application response provided by the Council was caveated in those terms and that the advice was not binding. On this basis, I cannot conclude that the Council acted unreasonably.

6. The applicant also asserts that the application site being 'garden land' was raised very late in the protracted determination of the application, and that it is definitely not 'garden land' but a separate piece of land with separate legal title and separately owned, which the Council was aware of. On this basis, the applicant states that the Council acted unreasonably in the determination of the application and that the reason for refusal was inaccurate.
7. I appreciate that this would have been frustrating for the applicant and that the outcome of the application would have been a disappointment. However, I am mindful of Paragraph 050 of the PPG which states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.
8. As outlined in my Decision, following consideration of the application on its planning merits, I have concurred with the Council and consider that the proposed development would conflict with the development plan and cause harm to the Council's adopted spatial strategy for housing delivery. Therefore, I consider that the Council did not act unreasonably in its assessment of the proposed development and in refusing the application.
9. The applicant has raised the issue of the expense incurred as part of the planning application process, in addition to the cost incurred subsequently. Costs associated with the application process are not within the remit of a Costs Application, which is limited to the cost associated with the appeal itself.

Conclusion

10. Taking all of the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated. Therefore, the application for an award of costs is refused

F Cullen

INSPECTOR