
Costs Decision

Site visit made on 18 February 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th March 2020

Costs application in relation to Appeal Ref: APP/M1595/W/19/3241720 17 College Avenue, Grays RM17 5UN

- 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 Hyjan Investments Holdings Ltd for a full award of costs against Thurrock Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a detached dwelling (Class C3), with associated access, parking and landscaping.
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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 the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably in that it has been inconsistent in its approach to the application of its Development Plan Policies having regard to a position advanced in a previous Inspector's decision in the Borough¹. In my decision I referred to the fact that the Inspector did not refer to Saved Policy H11 of the Thurrock Borough Local Plan (Adopted September 1997) (the LP) or Annexe A9 accompanying it. Instead, the Inspector relied on the more recent policies of the Council's Core Strategy and Policies for Management of Development (Focused Review: Consistency with National Planning Policy Framework, Adopted January 2015) (the CS).
4. However, the evidence before me does not indicate that the Council has acted unreasonably in referring to Saved Policy H11 of the LP or Annexe A9, as these still form part of the Development Plan. Moreover, this was a point I made in arriving at my decision and I adopted a similar approach in referring to the policy. The absence of more recent design guidance in support of Policy CSTP23 of the CS is regrettable. However, Annexe A9 is still available to guide the application of Development Plan policy in the Borough but, in this case, the Council chose not to rely on it.
5. The applicant has referred to the pre-application discussions between the main parties regarding the abovementioned appeal decision. However, there is no substantive evidence before me of the nature or content of the discussions that

¹ Appeal Ref: APP/M1595/W/18/3207492 (168 Branksome Avenue, Stanford-Le-Hope, Essex SS17 8DE)

took place following the Council's initial written advice, dated May 2019.

Be that as it may, although pre-application advice is not binding, it is clear that the Council raised other concerns in relation to effect of the proposal on the character and appearance of the area. Furthermore, as I alluded to above, when the Council went on to decide the planning application it did not rely on Annex A9 of the LP. Moreover, there is no reference to it either in their first reason for refusal or the relevant part of their Officer Report which refers to 'design, layout and the impact upon the area'.

6. Following the receipt of the current appeal, the Council chose not to produce a separate statement of case and instead chose to rely on their 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.
7. In my decision, it is evident that I considered that the Council's reasons for refusal stand up to scrutiny. Whilst I arrived at a different conclusion to the Council in relation to one aspect of their second reason for refusal, I am satisfied that the Council acted reasonably in refusing the appeal proposal and that it was able to substantiate its reasons for refusal. Moreover, in the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should have been refused permission on the grounds advanced in the Council's reasons for refusal, to which I was in agreement with in my decision.
8. Consequently, I cannot agree that the Council has acted unreasonably in this case. As such, there can be no question that the applicant incurred unnecessary or wasted expense.

Conclusion

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

Paul Thompson

INSPECTOR