
Costs Decision

Site visit made on 10 March 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th April 2020

Costs application in relation to Appeal Ref: APP/D1590/W/19/3243372 10 Underwood Square, Leigh-on-Sea, Essex SS9 3PB

- 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 Mr G Newton for a partial award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 1 No. 5 bedroom detached house. 2 No. new parking spaces to front with new crossover.
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Decision

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

Reasons

2. The Planning Practice 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.
3. The applicant claims that the Council has acted unreasonably in 3 main ways. Firstly, the applicant considers that the Council should not have had regard to the proposal's potential cumulative effects with an application for development of the land adjacent to the appeal site, which was pending determination when the decision was made (ref 19/01749/FUL). Secondly, the applicant believes that the Council misapplied considerations relevant to a scheme for 4 dwellings on the site and the adjacent land, which was dismissed at appeal (ref APP/D1590/W/17/3182743). Finally, following on from the second matter, the applicant considers that the Council should not have assessed the potential for uniformity to be created across the site and the adjacent land, as only one dwelling is proposed and therefore no dwellings would be alongside it.
4. The Planning Practice Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to substantiate each reason for refusal and if they persist to object to elements of a scheme which an Inspector has previously indicated to be acceptable.
5. In respect of the first matter, as set out in my appeal decision, I consider that development is likely to come forward on the land adjacent to the appeal site. In this context, I consider that it was appropriate for the Council to have had regard to the potential cumulative effects of the proposed development and the potential development of the adjacent land, including the development proposed by the pending application, in reaching a decision.

6. The amount of weight attached to each consideration is a matter for the decision-maker. In this case, the Council's appeal statement explains that the weight given to the potential cumulative effects was limited. There is thus no evidence to suggest that the Council attached an undue amount of weight to the potential cumulative effects, or that it gave this consideration greater significance in its decision-making process than it gave to national and local planning policies. I therefore consider that the Council has not behaved unreasonably in this respect.
7. Regarding the second matter, I note that there are similarities between the appeal scheme and the previous appeal for 4 dwellings, in terms of the position and design of the proposed dwelling adjacent to 51 Lime Avenue. The previous Inspector stated that the dwelling would have an appropriate relationship with no. 51. However, the Inspector concluded on the scheme as a whole and did not state that the dwelling adjacent to no. 51 specifically would have an acceptable effect on the character and appearance of the area in all respects. I consider that the Council was entitled to reach the view that it did and adequately substantiated its reasons for refusing the application in the context of the previous appeal decision. I therefore consider that the Council has not behaved unreasonably in respect of this matter.
8. In relation to the final matter, I am satisfied that the Council's comments regarding uniformity were made in response to the applicant's comment that the relationship between the proposed development and 51 Lime Avenue would be similar to the relationship between 27 Underwood Square and 42 Lime Avenue, and not in relation to the potential for uniformity to be created across the appeal site and the adjacent land. It is clear that the application was assessed on the basis of one dwelling being proposed. I therefore consider that the Council assessed the application in an appropriate manner and has not behaved unreasonably in this respect.
9. In conclusion, I do not agree that the Council has acted unreasonably. As such there can be no question that the applicant has been put to unnecessary or wasted expense.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Mark Philpott

INSPECTOR