



Costs Decision

Site visit made on 15 July 2020

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Costs application in relation to Appeal Ref: APP/N1540/W/19/3248022 Service Bays, The Stow, Harlow CM20 3AB

- 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 Joseph Teitelbaum (c/o Harlow Properties Ltd) for a full award of costs against Harlow District Council.
 - The appeal was against the refusal of planning permission for development described as *'redevelopment of existing service bays (employment use) into a mixed-use development comprising of 87 no. 1 and 2-bedroom apartments, 11 live work units and 660sqm of B1 use. The proposals also incorporate an under-croft car parking, mews courtyard and residential gardens'*.
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Decision

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

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Although the PPG states that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, it makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, during the process by which the Inspector's decision is reached.
3. Pre-application discussions took place with officers and that is reflected in the favourable officer recommendation to the Council's Development Management Committee. I do not have the benefit of being party to the meeting of the committee and the discussions that took place and I have not been provided with any substantive record of their discussions.
4. Nonetheless, the committee were given a further representation to consider when making the recommendation and as the decision-making committee. Notwithstanding the positive officer recommendation, the committee was not bound to accept the advice especially in cases with a degree of subjectivity and where an exercise of judgement is required, as is the case here. Accordingly, it is also not determinative that only 2 objections were received and there were no objections from statutory consultees.
5. The reason for refusal clearly states the issues and the policies of the development plan that members considered the proposal would conflict with,

which are broadly in accordance with the most up-to-date national policy. In my view and on the evidence before me, the members of the committee simply determined that it would result in the overdevelopment of the site that would harm the character and appearance of the area and the use of neighbouring buildings. Although I have reached a different conclusion on the latter, I am satisfied they have demonstrated a reasonable basis for this stance, and one to which I have also concluded is sufficiently harmful to result in the dismissal of the related planning appeal.

6. I therefore do not accept that as the appellant's final comments on his application suggest, that 'very detailed consideration' was given to the impact on neighbouring properties and that the matters should have been deferred for further consideration and discussion.
7. Taking everything together, whilst I appreciate that the appellant does not agree with the Council's consideration and opinions relating to the effect of the proposal, the issues at the heart of the appeal involve matters of subjectivity and planning judgement. Despite negotiations that may have taken place on a later scheme, I do not have the full details before me and the concerns raised and evidence before me, does not indicate to me that further discussions and deferment would have resulted in a different decision. Given their conclusions, which I am satisfied were properly reached, planning permission should not clearly have been granted, and an appeal was therefore inevitable.
8. For these reasons, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

Richard Aston

INSPECTOR