
Costs Decision

Site visit made on 11 August 2020

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2020

Costs application in relation to Appeal Ref: APP/B1550/W/20/3250266 Land Rear of 98 to 128, High Street, Rayleigh SS6 7BY

- 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 Dylan Collins of Eden Luxe Ltd for a partial award of costs against Rochford District Council.
 - The appeal was against the refusal of demolition of existing buildings. Redevelopment of the site to provide 2 No commercial units and 35 No residential apartments with associated landscaping.
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Decision

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

Reasons

2. An award of costs may be allowed where it is found that a party behaves unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. In this case, the appellant is seeking a partial award of costs relating to the work carried out in relation to appeal ref APP/B1550/W/20/3250266 as it considers the Council to have acted unreasonably by refusing the planning application on air quality grounds.
3. The Appellant claims that the Council has failed to produce counter evidence to substantiate the air quality ground of refusal and that, by also refusing the appeal scheme on lack of parking, the Council has contradicted one of its own Reasons for Refusal.
4. The Council refused the planning permission on four main grounds, including the effect of the proposal on an Air Quality Management Area, namely the Rayleigh town centre Air Quality Management Area (the AQMA). The purpose of the AQMA is to reduce public exposure to poor air quality and address the causes of poor air quality. This applies to where poor air quality standards could affect people in their homes. Once an area is declared as an Air Quality Management Area, an Action Plan must be developed in order to improve the air quality in that area.
5. The PPG provides examples of unreasonable behaviour by local planning authorities. Unreasonable behaviour includes substantive matters such as failure to produce evidence to substantiate a reason for refusal on appeal and imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other

respects, thus not complying with the guidance in the National Planning Policy Framework on planning conditions and obligations.

6. Although it would not have been unreasonable to expect a more detailed response from the Council in relation to the AQMA, including for example, the latest data collected and how it is assumed the proposal will affect its objectives, considering the policy context in relation to air quality and the aims of the AQMA, I do not find that the Council has acted unreasonably.
7. The Council has also dismissed the appeal on lack of parking grounds which the Appellant has claimed that contradicts one of the other reasons for refusal, namely concerns regarding air pollution.
8. The Council's objection appears to be based on local car ownership levels and the parking standards included within the Parking Standards: Design and Good Practice Supplementary Planning Document (2010) (Parking SPD). Considering that the development proposal includes a substantially lower level, approximately 50% less, of off street parking than that anticipated by both local car ownership levels and the adopted parking standards, I do find that the Council's concerns are pertinent, justified and relevant to the matter at hand.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andre Pinto

INSPECTOR