
Costs Decision

Site visit made on 9 November 2020

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2020

Costs application in relation to Appeal Ref: APP/V1505/W/20/3252937 150 Great Berry Lane, Langdon Hills, Basildon, SS16 6BW

- 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 Pymont Homes Ltd for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of an application for planning permission for demolition of existing dwelling and erection of 2no. new chalet dwellings and 1no. bungalow.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. Although the effect of a development on the character and appearance of the area is subjective matter, in this case, the Council refused planning permission on the grounds that the bungalow to the rear would be backland development. As the bungalow would form a continuation of an existing row of bungalows with direct access and frontage onto the same existing road, regardless of the status or condition of that road, it would not, as a matter of fact, be backland development.
5. In defending the appeal, the Council stated that the Committee considered that the development would appear cramped and incongruous in the street scene. However, these more subjective concerns were not cited as reasons for refusal on the decision notice and no reasoned explanation has been provided as to why it was considered the proposal on this site would detract from the character and appearance of the area having had regard to other very similar developments permitted very nearby.

6. Furthermore, the Council accepts that it does not have a five year housing land supply. Upon finding against the development plan, there is no evidence before me to demonstrate that the Committee went on to consider the 'the presumption in favour of sustainable development' in accordance with paragraph 11(d) ii of the National Planning Policy Framework (the Framework).
7. This requires that in cases such as this, where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole.
8. Although the Council makes reference to some parts of the Framework to support its position, it has not applied the 'tilted balance' to this proposal, which it should have done in the circumstances. The Council state that the Committee, in reaching their decision, were aware of the need for additional housing and of government guidance to make the best use of urban sites. However, this is not sufficient to demonstrate that the full social, economic and environmental benefits of the scheme were acknowledged or what weight, if any, was given to those benefits before concluding that the Council's concerns would significantly and demonstrably outweigh them.
9. Consequently, the Council's behaviour in its determination of the application was unreasonable and resulted in the cost of an appeal that may have been avoided altogether had the correct procedure, as set out in the Framework, been followed.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Basildon Borough Council shall pay to Pymont Homes Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Rachael Bartlett

INSPECTOR