



Costs Decision

Site visit made on 19 October 2020

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Costs application in relation to Appeal Ref: APP/J1535/W/20/3248584 19 Blackmore Road, Theydon Bois, Epping, CM16 7LT

- 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 was made by Ms Hill for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for the removal and replacement of the existing house on the site with a new-build single family dwelling.
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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. The application for costs is made on a substantive basis, and states that the Council's did not determine similar cases in a consistent manner, and that they prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The reason for the Council refusing planning permission did not cite any conflict with the adopted Epping Forest Local Plan (1998) and Alterations (2006); the conflict arose with Policy H1 of the emerging Epping Forest Local Plan Submission Version 2017. My decision found that substantial weight could be attached to that emerging Plan, but that the proposed development would not conflict with Policy H1 as the new dwelling is to be seen as a bungalow. Such a finding is consistent with the Council's own conclusions on the matter expressed in their pre-application response, where no objection in principle was raised as the replacement dwelling was seen as a bungalow.
5. It is evident to me from email correspondence during January 2020 that the Council changed their position regarding how the proposal should be judged against Policy H1. The Council stated that, at the time of the pre-application response, the emerging Local Plan was still under consideration by the appointed examination Inspector, but by January 2020 the Local Plan 'now

carries weight in the determination of applications and that is why your application cannot be recommended for approval to Committee’.

6. However, the documentation provided to me shows that the Council’s formal pre-application response post-dated the Inspector’s August 2019 response to the Hearing sessions, and indeed mentions that advice. The pre-application response goes on to attach ‘significant’ weight to certain policies of the emerging Local Plan. There was no reference to Policy H1 and there was a clear statement in the pre-application response that the proposed dwelling was a bungalow, and so there was no objection to the principle of development. It was therefore reasonable for the appellant’s agent to assume the Council had taken into account the emerging Local Plan, attached significant weight to the policies it saw relevant in light of the Inspector’s preliminary advice, and thus see that Policy H1 would not be a bar to the replacement of the existing bungalow with the dwelling as shown.
7. I acknowledge that a pre-application response is not binding on a Council’s formal decision. However, a person making a planning application has a legitimate expectation for the local planning authority to provide an explanation as to why any formal decision might differ. The Council’s Delegated Report on the formal planning application did not explain why there had been a change in any assessment of the proposed dwelling as being seen as a bungalow. Nor did it explain why, seemingly, different weight or emphasis was being given to Policy H1 at that time compared to August 2019.
8. This lack of explanation for a change in approach was not clarified in the Council’s submissions at the appeal stage. The appellant also provided subsequent evidence that the Council assessed another case in the District where a property with accommodation in the roofspace was seen as being a bungalow, and so complied with any test under Policy H1 (ref. EPF/1457/19). The Council did not dispute this evidence or their finding of fact in that other case.
9. I further note the Delegated Report stated no substantive information had been provided with the planning application to show the proposed dwelling would better assist those living with reduced mobility or the elderly compared to the existing property. It is clear to me that the Design and Access Statement did refer to such benefits, including references to the adaptability of the dwelling in the longer term. It was thus apparent the proposed development was further consistent with the overall objectives of Policy H1.
10. It is my judgement that the Council should not have refused planning permission on the basis of Policy H1 as they had confirmed the dwelling was a bungalow in their pre-application enquiry, which was assessed at that time when Policy H1 had the same weight as when the formal Decision Notice was issued. They also failed to take full regard of the accessibility benefits of the proposed development and how these represented compliance with objectives contained in that policy. Thus, the Council prevented development which should clearly have been permitted, having regard to its accordance with the development plan and other material considerations.
11. It is my further judgement that the Council did not determine similar cases in a consistent manner: their own conclusions with regard to the EPF/1457/19

application should have led them to a conclusion that the appeal scheme represented a bungalow.

12. I therefore find that the Council's behaved unreasonably, and this unreasonable behaviour has directly caused Ms Hill to incur unnecessary expense in the appeal process.

Costs Order

13. 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 Epping Forest District Council shall pay Ms Hill 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.
14. The applicant is now invited to submit to Epping Forest District 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.

C J Leigh

INSPECTOR