



Costs Decision

Hearing held on 8 December 2020

Site visit made on 9 December 2020

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2021

Costs application in relation to Appeal Ref: APP/M1595/W/19/3226093 Land at King Street, Stanford le Hope, Essex SS17 0HL

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Capital Land Partners LLP for an award of costs against Thurrock Borough Council.
 - The appeal was against the refusal of planning permission for construction of a mixed use development comprising 159sq.m of retail/leisure/commercial units (within Classes A1, A2, A3, A4, A5 and D2) at ground floor level and 47 residential units on upper floors together with an undercroft and surface car park (comprising 56 car parking spaces), access, landscaping and associated works..
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Decision

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

Reasons

2. 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.
3. The application essentially relies on the fact the Council Planning Officer recommended that planning permission be granted for the proposal, but that the Members took a different course of action. The application centres on the applicant's claim that the Council: (a) made inaccurate assertions about the proposal's impact and benefits, which were not supported by objective analysis and evidence; (b) failed to produce evidence to substantiate a reason for refusal (RFR); and (c) did not determine similar cases in a consistent manner.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they make inaccurate assertions about a proposal, fail to produce evidence to substantiate each reason for refusal and fail to determine similar cases in a consistent manner.
5. Regarding matters (a) and (b), in respect of RFR1 the Council's highways officer did not object to the reduced public car park. However, this does not automatically mean that the proposal would be acceptable. The Council is not duty bound to follow consultees' advice. While there was not a contemporary town centre parking study or strategy to refer to, the Planning Committee Minutes show that the Council took account of parking provision in a previously approved scheme for the site. It also had regard to concern of the community,

- including some local business, about the proposal's effect on town centre parking.
6. It will be clear from my decision that I have come to a different view from the Council regarding the proposal's effect on the vitality of the town centre, including carparking. Nevertheless, in the light of the above, Council Members were entitled to reach their view, given the evident local sensitivity about town centre parking.
 7. Regarding matters (a) and (c), in respect of RFR2 I see evidence of the Council's character and appearance rationale in paragraphs 3.33 to 3.41 of its appeal statement. It will be clear from my decision that I have reached a different view from the Council on the character and appearance impact of elements of the proposal other than its large podium wall. Nevertheless, the Council was entitled to apply its planning judgement on this matter, given the substantial mass of the proposed development. Contrary consultee advice did not preclude this. Nor did the previously approved scheme for the site, given that this was unimplemented from almost a decade earlier, predated current local and national planning policy, and the current appeal proposal has its own design and circumstances.
 8. Regarding benefits, in respect of matter (a) the Planning Officer's Report to Planning Committee contained assessment of a range of the proposed scheme's benefits. It also acknowledged a lack of five year deliverable housing land supply. Furthermore, I see evidence in the Minutes of the Council's Planning Committee Meeting of 14 February 2019 of consideration of the proposal's contribution to housing supply and use of brownfield land. That said, it is not clear that, in deciding to refuse planning permission, the Council considered the applicability of the 'tilted balance', as per paragraph 11(d) of the National Planning Policy Framework, when weighing planning harm and benefit.
 9. To conclude, I find as follows. In relation to matter (a) and RFR1 and RFR2, the Council was entitled to apply its planning judgement about the proposal's impact. In respect of matter (b) the Council referred to evidence and was entitled to apply its planning judgement in relation to RFR1. Regarding matter (c) the Council's judgment on character was not inconsistent. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case in respect of matter (a) in relation to impact, and matters (b) and (c).
 10. I find that the Council has acted unreasonably, partially in respect of matter (a) and the weighing of benefits, through lack of clarity on the applicability of the 'tilted balance'. However, it is not clear that had the Council been clearer on this matter, the core arguments would have been substantially different in scope, or an appeal would have been avoided.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for costs fails.

William Cooper

INSPECTOR