

Costs Decision

Site visit made on 14 December 2020

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

**Costs application in relation to Appeal Ref: APP/D1590/W/20/3256510
Land to the rear of Baryta House, Victoria Avenue, Southend-on-Sea,
Essex SS2 6AZ**

- 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 Shaviram Southend Limited for a full award of costs against Southend-on-Sea Borough Council.
 - The appeal was made against the refusal of planning permission for the erection of ground floor plus three storey building to accommodate 9 flats together with reconfigured car park layout to the rear of Baryta House.
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Decision

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

Reasons

2. *Planning Practice Guidance* advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. It is alleged that the Council acted unreasonably as it failed to provide evidence to substantiate each of its reasons for refusal; and it has made inaccurate and vague assertions.
 4. The Council's first reason for refusal suggests that the quality of the amenity space would result in substandard living conditions for the future occupiers of the site, providing a poor quality residential environment.
 5. The Council's statement suggests that the majority of the communal area and the balconies serving the northern flats would be located to the north of the proposed building and would be overshadowed by it, resulting in unattractive and poorly designed amenity areas. Based on the plans referred to in the officer report to the committee, this is clearly incorrect as the communal area and the balconies would be located on the west and south.
 6. Whilst I agree with the Council that the communal area represents more of a landscaping area than an active amenity space, I have found no evidence to demonstrate why the balconies proposed are unacceptable, notwithstanding that the orientation appears to have been confused. The Council state that they are inadequate and of poor quality. No further evidence is provided.
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7. Furthermore, whilst the provision of outdoor space is one measure of the quality of the accommodation, I have been provided with no evidence from the Council with regard to the quality of the units overall or a balanced view as to the level of harm that would result from the balconies proposed. It is not clear why the Council consider that there would be conflict with Policy DM8 of the Development Management Document 2015 as the proposal appears to accord with it. The other policies of the development plan referred to in the reason for refusal have also not been addressed and I found them to be supportive. The proposal therefore gains support from the development plan.
8. Reference is made to the Supplementary Planning Document: Design and Townscape Guide 2009 in the Council's reason for refusal. However, no mention of it is made in their appeal statement. It accepts the provision of balconies, without other communal amenity space, in exceptional circumstances. It sets out that this must be a matter of individual judgement. The Council has not provided any evidence of any individual judgement or reasoning in this regard.
9. I am not satisfied that the decision has been taken in accordance with the policies of the development or that an appropriate balancing exercise has been undertaken considering the benefits of the proposal and any harm. The Council state that they accept that they have a deficit in housing land supply and therefore the tilted balance in favour of sustainable development should be applied when determining the application. I found no clear evidence of this. Their concluding remarks are that any potential benefits, including the limited provision of housing, were not considered by the Committee to outweigh the identified harm. The test set out by the *National Planning Policy Framework (Framework)* however should have been whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when considered against the policies of the *Framework* taken as a whole. I have found no assessment of this in the Council's evidence.
10. The Council's second reason for refusal claimed that the development would be to the material detriment of highway safety and the free flow of the local highway network. I have found no evidence of consequence that would demonstrate harm or justify an approach that would be at odds with the Council's own experts.
11. I find that the Council has acted unreasonably by its failure to produce evidence to substantiate each reason for refusal; and by relying on vague, generalised and inaccurate assertions about the proposal, which are unsupported by any objective analysis. Whilst the Council is entitled to make decisions that are contrary to the recommendations of its officers, any alternative view must be supported by evidence and any assessment must take account of the development plan and all other material considerations, including the *Framework*.
12. Overall, I conclude that the actions of the Council fall squarely within the examples of unreasonable behaviour set out in the *Guidance*. As I have found no reason for the application to have been refused, wasted expense from pursuing this appeal has resulted because of their actions. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the *Guidance*, has been demonstrated and a full award of costs is therefore justified.

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 that Southend-on-Sea Borough Council shall pay to Shaviram Southend Limited, the full 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 Southend-on-Sea Borough 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.

Peter Eggleton

INSPECTOR