



Costs Decision

Site visit made on 17 November 2020 by Thomas Courtney BA(Hons) MA

Decision by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Costs application in relation to Appeal Ref: APP/Z5060/W/20/3255008 44 Rugby Gardens, Dagenham RM9 4BA

- 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 George Le Port for a full award of costs against the Council of the London Borough of Barking & Dagenham.
 - The appeal was against the refusal of planning permission for a single storey one-bedroom new dwelling with sedum roof.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, 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. It goes onto state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters, such as deliberately concealing evidence, providing evidence that is inaccurate or untrue, or by failing to adhere to deadlines. They may also be at risk if they behave unreasonably with regard to the substance of the matter under appeal, by preventing development that should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations.
4. The officer's report does not acknowledge the 2017 SHMA, or the results of the 2019 Housing Delivery Test, nor have the Council provided any evidence to counter the applicant's suggestion that they do not have a five years supply of housing land. Although I do not consider this to be a deliberate attempt to conceal evidence, it is poor practise and does not demonstrate a thorough assessment of the proposal taking account of all material considerations.
5. Also, although the applicant suggests that the Council have been selective in their identification of relevant policies, this does not appear to be a dishonest ploy. Clearly Council's only need to refer to relevant development plan policies, and whilst the applicant refers to a number of policies which they consider to be relevant but are not mentioned by the Council, I do not consider the Council's failure to highlight these policies to be fundamental. This is particularly so as many of the policies highlighted are in the draft London Plan

which is yet to be adopted. In any case, the Council recognises the benefit of one new small unit and this is consistent with these emerging policies. I also find nothing in their officer's report of any consequence that is untrue, nor do I agree that they have given the National Planning Policy Framework prominence above the development plan.

6. The applicant has also commented that the Council did not send, to their agent, a copy of their appeal questionnaire and associated documents by the deadline. However, such associated documents would primarily have been the officer's report and policies, which the applicant had already provided in their evidence, and any third party representations, of which there were none. The questionnaire also confirmed the Council did not intend to provide an appeal statement, which is their choice. As such the applicant was not prejudiced and incurred no wasted expense as a result of the Council's actions.
7. Overall, the officer's report was not comprehensive, particularly in respect of the Council's ability to currently meet its housing land supply target, and this is unreasonable. Nonetheless, even furnished with the exhaustive evidence provided by the applicant, I have dismissed the appeal and it is reasonable to consider the Council, even if they had taken all material considerations into account, would have come to the same view. As such they did not prevent development that should clearly be permitted.
8. I therefore find that although the Council did act unreasonably, it has not been demonstrated that it resulted in unnecessary or wasted expense. Consequently, I recommend the application for an award of costs is refused.

Thomas Courtney

APPEAL PLANNING OFFICER

Inspector's Decision

9. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application is refused.

Andrew Owen

INSPECTOR