



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/20/3254518 Rear of 60 High Road, Chadwell Heath RM6 4BP

- 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 N. Chowdhury 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 the formation of a two storey detached building containing two self-contained flats.
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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 or by not determining similar cases in a consistent manner.
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 contest the applicant's suggestion that they do not have a five years supply of housing land. Although I do not consider this to be an intentional attempt to withhold evidence, it is poor practise and does not demonstrate a thorough assessment of the development taking account of all material considerations.
5. Also, although the applicant suggests that the Council have been selective in their identification of relevant policies, I do not consider this to be unreasonable behaviour. 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 mention 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 two new small units 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 a copy of the appeal questionnaire and associated documents to their agent 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. The planning history of the site, and of similar developments nearby were considered by the Council. The previous proposals for the site were for a different use so are not similar. So it was not unreasonable for the Council to come to a different view in terms of traffic movements, notwithstanding the fact that in my view the extant consent was a consideration that outweighed the Council's concerns. Also, neither of the nearby residential developments at 7 Back Lane or 1-2 Tudor Parade appears to have been subject of a planning application so the Council's attitude regarding the pedestrian access to the appeal site is not inconsistent with previous approaches. I find no inconsistencies with previous appeals in the Council's assessment of the development against local plan Policies BC4 and BP5. BC4 relates to a form of development that is different to that proposed and BP5, as well as the Housing SPG, requires amenity space to be private, which would not be the case here.
8. 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.
9. 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

10. 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