
Costs Decision

Site visit made on 11 July 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2022

Costs application in relation to Appeal Ref: APP/J1535/W/21/3284002 Hillview, St. Leonards Road, Nazeing, Waltham Abbey EN9 2HQ

- 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 Robert Currell for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for 'replacement planning application for 5 flats to replace approved consent EPF/1547/18'.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) 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. It is an accepted principle that parties in planning appeals normally meet their own expenses. An award of costs does not extend to indirect losses.
3. The applicant claims that the Council acted unreasonably in changing the description of the development and determining the application on the wrong grounds and policies. The applicant also says that the Council have sought to mislead by referring to policies that do not apply and undervaluing other policies such as those that relate to housing supply.
4. The Guidance is clear that the local planning authority should not amend the description of development without first discussing any revised wording with the applicant or their agent. However, the dispute relating to the description was not a fundamental issue in determining the application. It was clear from the plans and supporting information submitted with the planning application what was proposed in the development. Even had the description not been changed, it is very unlikely that the outcome of the application would have been any different and an appeal would not have been prevented. This has not led the applicant to incur any unnecessary or wasted expenditure in pursuing the appeal.
5. Based on the evidence, I consider that the decision notice refers to the policies of the development plan that are of most relevance to the proposal. The officer report shows that an analysis of the merits of the proposal was undertaken with regard to the specific circumstances of the site and the development plan. The reason for refusal is further substantiated in the Council's statement of

case. I do not find that the Council acted unreasonably in terms of how they applied local policies to determine the planning application.

6. In particular, the Council has identified concerns that the proposal would fail to secure accommodation for local disabled residents due to the absence of a specific mechanism to limit the development for such needs. The benefits associated with the provision of such accommodation appear to have been a significant factor in the approval of previous applications on the site since these were considered to outweigh other concerns relating, for example, to parking provision.
7. The Council's position in relation to housing land supply is clearly set out in the officer report. Even if the Council had accepted that it could not demonstrate a 5-year housing supply, that would not mean that development plan policies relating to housing supply carried no weight. It would still be a matter for the decision maker to consider the weight to be given to the relevant policies. For the reasons set out in my appeal decision, I do not consider that the benefits of the proposal, including the small contribution that it would make to housing land supply, would outweigh the harms that I have identified.
8. I have reached the same decision as the Council regarding the merits of the proposal. That does not vindicate any procedure or reasoning on their part. However, it establishes that it is not the case that planning permission should clearly have been granted; the Council's decision stands scrutiny relative to the statutory approach to decision-taking. The dispute was a matter of planning judgement, rather than the applicant being forced into an appeal by consequence of unreasonable behaviour or delays in determining the application on the part of the Council.
9. It therefore follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. The evidence does not justify either a full or partial award of costs. The application for an award of costs is refused.

M Ollerenshaw

INSPECTOR