



Costs Decision

Site visit made on 13 November 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Costs application in relation to Appeal Ref: APP/D1590/W/23/3314769 17 Broadlawn, Leigh-on-Sea, Southend-on-Sea SS9 4QZ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Oliver Laxton for a full award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of details pursuant to Condition No 3 of a planning permission Ref: 21/01361/FULH granted on 17 May 2022.
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Decision

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

Reasons

2. The Planning Practice Guidance ('the PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby cause the party applying for costs to incur unnecessary expense in the appeal process. The application relies on the fact the Council were unreasonable in requiring the applicant to reconfigure the materials as shown on the approved plans and that such a request was in conflict with the previous Planning Inspector's appeal decision¹. Had the Council not misunderstood this, the applicant would not have incurred unnecessary expense submitting the appeal.
3. The Inspector, in determining the previous appeal, considered the design of the proposal to be acceptable but their reasoning was silent in respect of the materials and whether these were acceptable or otherwise. While Condition 2 of the appeal decision listed the approved plans, the wording at the start of Condition 3 in respect of materials stated, "Notwithstanding the details shown on the submitted plans and otherwise hereby approved...".
4. Consequently, the wording of Condition 3 meant the Council was not bound by the annotations on the approved drawings detailing the type of materials and their location on the building when assessing whether the submitted materials would be acceptable. Furthermore, while not accepting that the Council could amend the materials as detailed and located on the approved drawings, it is notable that the applicant submitted amended elevation drawings with the discharge of condition application to change the proposed material to the hipped gable of the garage roof from that shown on the approved plans.

¹ Appeal Ref: APP/D1590/D/21/3285976

5. The Inspector could have imposed a condition to ensure the development was undertaken in accordance with the materials specified in the application or requested that materials/samples be submitted to and approved by the local planning authority without the inclusion of the first part of Condition 3. However, the Inspector chose not to do this. Furthermore, the wording of the condition would not affect the enforceability and precision of Condition 2.
6. The acceptability or otherwise of the submitted materials on the character and appearance of the surrounding area, is a matter of subjective judgement. The Council was therefore entitled to come to the view that some or all of the materials were not acceptable and did not comply with the relevant local and national planning policies. Furthermore, the Council were not unreasonable in coming to their decision, as following consideration of the application on its merits alone, I have concurred with the Council.
7. The applicant considers the Council's refusal of the proposed materials was a misuse of process and an unreasonable attempt to stymie the development allowed by the Inspector. However, this has not been supported with evidence.
8. The evidence before me suggests that the Council's concerns in respect of the old look Siberian larch planks and the grey roof tile were discussed with the applicant during their consideration of the discharge of condition application, and the Council detailed how the applicant could overcome these concerns. Furthermore, the Council sought to extend the determination date to allow the applicant time to submit alternative details. Consequently, it was the impasse between the main parties' to agree the materials, that led to the requirement to submit an appeal, rather than the Council behaving unreasonably.

Conclusion

9. I therefore find that unreasonable behaviour by the local planning authority, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs is not justified.

A Berry

INSPECTOR