



Costs Decision

Site visit made on 24 January 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Costs application in relation to Appeal Ref: APP/Z3635/W/23/3323562 Land to rear of 176 and 178 Feltham Road, Ashford, TW15 1AD

- 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 G Murphy Ltd for a full award of costs against Spelthorne Borough Council.
 - The appeal was against the refusal of planning permission for erection of 2 no. two storey semi-detached houses with parking and amenity space.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 expense in the appeal process.
3. The Appellant's application for costs raises a substantive point. The PPG states that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. The Appellant's application has not raised any procedural points.
4. The Appellant's application is brief and simply contends that the Council behaved unreasonably in that its evidence did not reconcile the position that the Local Plan was by definition out of date. Whilst it does not say so, I assume the Appellants position is that, as a consequence, the Council were not in a position to reach the decision they did and prevented development which should have been permitted.
5. Whilst I have found the appeal proposal to be acceptable, that finding was based on the evidence presented by the Council, the policies of the development plan and National Planning Policy Framework (NPPF), and my own observations on site.
6. In relation to the Council's submissions, I am satisfied that its reason for refusal was reasonably precise in terms of identifying the harm that they alleged, as well as the policy of the development plan that the Council considered the proposal conflicted with. This reason for refusal was supported by the assessment undertaken within the Council's Delegated Report and subsequently within its Appeal Statement. Both were more than sufficient for me to understand the concerns raised by the Council.

7. The objections raised by the Council related to the alleged harmful impact of the development on the character and appearance of the area and the living conditions of neighbouring occupiers, and consequently the conflict with local plan policy and guidance that sought to secure a high quality design, to maintain and where possible make a positive contribution to local character and to protect existing and future occupiers living conditions. All of those assessments require the decision maker to apply an element of their own planning judgement as to local character, the acceptability of the relationships that would arise and the impact of the proposal on the streetscene.
8. Having concluded, in these respects, that the proposal would result in harm the Council went onto apply the '*tilted balance*' given the accepted absence of a five year supply of housing land. The Council's overall conclusion was that the adverse impacts of the development outweighed the benefits of the proposal and that the presumption in favour of sustainable development did not apply. Whilst I did not agree with the Council's findings in this respect or in relation to the alleged harm to local character and living conditions, I am satisfied that the Council properly applied and addressed paragraph 11 of the NPPF in undertaking their planning balancing exercise.
9. Furthermore, the Council did not raise an objection to the principle of residential development on the appeal site, but simply to its impact on local character and living conditions. In doing so, the Council's objections relied on the design and amenity policy of the development plan (policy EN1) and the accompanying guidance within the Design of Residential Extensions & New Residential Development Supplementary Planning Document. Both of these remained relevant, were not out of date and could be accorded weight, albeit they needed to be considered in relation to the policies on design and character within the NPPF and National Design Guide.
10. For the above reasons, I cannot agree that the Council has acted unreasonably in this case and as such there can be no question that the Appellant was put to unnecessary or wasted expense in the appeal.

Conclusion

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated.
12. An award of costs is, therefore, not justified.

G Roberts

INSPECTOR