
Costs Decision

Site visit made on 26 July 2016

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 October 2016

Costs application in relation to Appeal Ref: APP/A2280/W/16/3147398 132 Cooling Road, Strood, Rochester ME2 4RT

- 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 Andy Wilmot for a full award of costs against The Medway Council.
 - The appeal was against the refusal of planning permission for the erection of a 2 bedroom chalet bungalow.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice 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 or wasted expense in the appeal process.
3. In this case, the appellant argues that the Council acted unreasonably in refusing the application contrary to the advice of its planning officers. This led to an unnecessary appeal, wasting both time and expense in order to obtain planning permission which should have been granted by the Council.
4. The Council, acting in its role as local planning authority, is not bound to accept the advice of its officers providing there are reasonable grounds for taking a contrary decision and evidence is produced to substantiate each reason for refusal on appeal. The application was refused for three reasons.
5. The first was that the proposal would have no proper frontage to a highway. However, the site fronts a private drive which serves other properties and the highway authority raised no objections. The Council's statement argued that the access road was unsuitable as it was not adopted but the status of the road is not a planning matter. The claim that the proposal would represent backland development was unsubstantiated as the plot would have its own frontage.
6. The second reason was that the loss of garden would result in a very cramped development out of character with the area. However, the subdivision of a garden is not objectionable in itself and the Council offered no evidence that the resulting garden sizes would be inadequate. In addition, the single short paragraph amplifying this reason offered no explanation why the proposal would adversely affect the character of the area which has a variety of building types on a variety of plot sizes.

7. The third reason was that the proposal would harm the amenities of nearby occupiers. However, the single short paragraph of evidence merely asserted that the proposal would be 'cramped, overbearing, dominant and enclosing' as a result of the introduction of a new dwelling. No specific examples of harm to the occupiers of specific properties were identified, only a general reference to the property to the west which was unsubstantiated.
8. In summary, none of the Council's three reasons for refusal were supported by respectable and clear evidence at appeal. The brief explanation of each only offered vague, generalised assertions and no reference was made to any specific standards being breached. The backland development claim was erroneous and the apparent requirement for the road to be adopted unjustified.
9. The Council therefore behaved unreasonably in refusing the application without adequate reasons that could be substantiated at appeal. By delaying a development which should clearly be permitted the Council have acted unreasonably and caused the appellant unnecessary and wasted expense in needing to pursue an appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that The Medway Council shall pay to Mr Andy Wilmot, the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to The Medway Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

David Reed

INSPECTOR