

Costs Decision

Site visit made on 9 November 2016

by Kim Bennett BSC DipTP MRTPI

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

Decision date: 16 November 2016

Costs application in relation to Appeal Ref: APP/H2265/D/16/3157841 Land at 562 London Road, Ditton, Aylesford, Kent ME20 6BX

- 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 & Mrs Kieran & Leanne Fowler for a full award of costs against Tonbridge and Malling Borough Council
 - The appeal was against the refusal of planning permission for a new cross over and vehicular access.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that 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. The appellant argues that the Council relied too much on a previous appeal decision (the 2012 appeal decision)¹ which was in any event for a different form of proposal, and in setting aside advice from the Highway Authority, did not produce any evidence to demonstrate that there would be significant harm to highway safety. In response, the Council considers that it reached its decision in a balanced way, as is its responsibility as a decision maker, and that it did not set the advice from the Highway Authority aside, but balanced that against other material planning considerations. Key amongst those was the 2012 appeal decision where it was noted that the Inspector dismissed the appeal notwithstanding that in that particular case there was also no objection from the Highway Authority.
4. From the evidence before me, I note that there were two responses from the Highway Authority, one dated 13 May 2016 and the second dated 28 June 2016. It is not clear to me from the evidence who instigated the second response, but I note in particular that it referred to the 2012 appeal decision and the principle difference between the two proposals i.e. that turning facilities were proposed in the case of the current appeal. Reference to historic crash data was also included.

¹ APP/H2265/D/12/2176454

5. I agree with the Council in saying that the absence of a Highway objection does not necessarily mean that planning permission for a highway related proposal should be granted. However in my view, in the light of the detailed responses from the Highway Authority, it was incumbent on the Council to explain why those views should be set aside and to produce some evidence to show that there would be significant harm or risk to highway safety arising from the proposal, which are the tests required in Policy SQ8 of the Council's Managing Development and the Environment Development Plan Document 2010. That was particularly so given that the proposal was intending to provide on-site turning facilities, which was not the case with the 2012 proposal, and that the historical crash data showed that there had been only one recorded crash to the west of the site in the last 3 years. Furthermore, the access at the end of the terrace at No 568 London Road, was granted permission in 2002 and the Highway Authority had advised that there had been no incidents associated with that access since it was formed.
6. Although the Council argues that its decision was based in a logical evidence based way, I can find no support for that contention in its officer report. The only actual assessment of the proposal (as opposed to descriptive or factual comments) in relation to highway matters, appears in paragraph 5.15 and 5.16 of the officer report where it is clear that great weight was placed upon the previous appeal decision in reaching its decision.
7. Given that the 2012 decision related to a different form of proposal and was dismissed for several reasons in addition to concerns about highway safety, I consider the Council needed to produce evidence to show how there would be significant harm or risk arising, in the face of the Highway Authority's strong evidence to the contrary. Such evidence for example might have been in the form of changes in traffic conditions since the previous decision, local representations producing actual evidence relating to highway safety, or evidence that there would be significant additional traffic movements compared to the current situation. Instead, the evidence from the officer report was based on more generalised observations and relied heavily on comments made by the previous Inspector in relation to a fundamentally different proposal.
8. In my view therefore there was a failure to produce evidence to substantiate the reasoning behind the reason for refusal or to explain why the Highway Authority's twice held view should be set aside. The lack of such objective analysis was unreasonable
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Tonbridge and Malling Borough Council shall pay to Mr & Mrs Kieran & Leanne Fowler, the costs of the appeal proceedings described in the

heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Tonbridge & Malling Borough 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.

Kim Bennett

INSPECTOR