

Costs Decision

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 07 December 2016

Costs application in relation to Appeal Ref: APP/X2220/W/16/3152817 Land south of New Dover Road, Capel-Le-Ferne, Kent CT18 7LG

- 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 Malcolm Jarvis Homes Ltd for a full award of costs against Dover District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of 40 dwellings together with car parking, landscaping and all associated infrastructure.
-

Decision

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

Reasons

2. National Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. Unreasonable behaviour can include preventing or delaying development which clearly should be permitted.
 3. The Planning Committee decided to refuse the application contrary to the advice of their professional officers who produced a written report analysing the effects of the proposal. Whilst a planning committee is not bound to accept the recommendations of their officers, if their technical advice is not followed, then reasonable planning grounds for taking a contrary decision need to be provided supported by relevant evidence.
 4. I recognise that consideration of planning applications often involves matters of judgement which at times can be very finely balanced. In this appeal the representations of local residents emphasised their concerns regarding the design of the proposal and the effect that this would have on the character and appearance of the area and in particular on the adjoining Area of Outstanding Natural Beauty (the AONB) and Heritage Coast.
 5. It was not, in my opinion, therefore unreasonable for the Planning Committee, where the issues are finely balanced, to give substantial weight to objections received from local residents rather than the recommendations of its Officers to grant planning permission.
 6. Whilst I have found against the Council in respect of design and the effect of the proposal on the character and appearance of the area, the AONB and the Heritage Coast I consider that the Council has provided a detailed appeal
-

statement supported by policies adequately addressing these matters in response to the appeal and given the Committees' concerns regarding the effects of the proposal has not therefore acted unreasonably. Accordingly, the appellant has not incurred unnecessary or wasted expense as a result of the Council's actions in this regard.

7. However, the Appellant submitted a signed Unilateral Undertaking (UU) prior to the start of the Hearing which, amongst other contributions, would deliver nine affordable housing units and a financial contribution to off-site provision. As a result at the start of the Hearing the Council indicated that they no longer wished to defend their second reason for refusal. I appreciate that this saved time and resources at the Hearing. However, a copy of the UU had been sent to the Council prior to the Hearing and I consider that there was sufficient time for the Council to have notified the appellant prior to the Hearing of their intentions not to defend their second reason for refusal. As a result I consider that there has been a procedural error by the Council which, because the appellants Affordable Housing witness attended the Hearing, has caused the appellant to incur unnecessary or wasted expense as described in the PPG and therefore a partial award of costs for this element is justified.

Costs Order

8. 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 Dover District Council shall pay Malcolm Jarvis Homes Ltd, the cost of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to Mr Thomas Hegan's attendance at the Hearing on the 8 November 2016.
9. The applicant is now invited to submit to Dover District Council, to whom a copy of this decision has been sent, details of those costs a view to reaching agreement as to the amount. In the event that the parties cannot agree on an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jo Dowling

INSPECTOR