

Costs Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 9 December 2016

Costs application in relation to Appeal Ref: APP/U2235/W/16/3145575 Wind Chimes, Chartway Street, Sutton Valence, Kent M17 3JA.

- 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 Vincent Woodcock for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of outline planning permission for residential development.
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Decision

1. The application for an award of costs made by Mr Vincent Woodcock against Maidstone Borough Council is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process and that the application needs to clearly demonstrate that this is the case. Unreasonable behaviour may be procedural and/or substantive.
 3. The applicant is seeking a full award of costs on the basis of the Council unreasonably refusing the application for planning permission and unreasonably defending the appeal. In the event that the application for a full award of costs is refused, the applicant is seeking a partial award of costs on the grounds that the Council behaved unreasonably in relation to the procedural matters of the appeal.
 4. The application was made in writing prior to the hearing and added to orally. The Council responded in writing after the hearing had closed.
 5. The effect of the proposal on the character and appearance of the area was assessed in the officer report to be acceptable in terms of visual impact and that the scheme could be designed to reflect the prevailing character of the existing built form. Nevertheless, the Council's Planning Committee concluded that it would be harmful and refused the application contrary to advice of their officers.
 6. Authorities are not bound to accept the recommendations of their officers, but if their technical or professional advice is not followed then reasonable planning grounds for taking a contrary decision need to be provided, supported by relevant evidence.
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7. Minimal justification was presented in the Council's statement or at the hearing to substantiate the Council's position and it also failed to demonstrate why the Committee placed a different weight on the planning considerations than those in the officer report. This was not a difference in judgement but a failure to adequately justify a position. Whilst a professional landscape witness is not necessarily required to address matters relating to landscape, no landscape evidence was presented to challenge the detail of the applicant's landscape appraisal. This lack of justification is compounded by the fact that the appeal statement and the case at the hearing was made by the officer who had written the report to the Committee rather than a member of the Committee which took the decision.
8. Whilst I have concluded in my decision letter that the Council does not have a five year housing land supply it was not unreasonable for the Council to change its stance to the appeal proposals in the light of it having submitted its draft Local Plan and supporting information for examination. Similarly it was not unreasonable for the Council to argue its housing position on the basis of a 5% buffer irrespective of my conclusion on this matter.
9. Nevertheless I find that the Council failed to substantiate harm to the character and appearance of the area and this unreasonable behaviour resulted in the applicant incurring costs which were unnecessary.
10. As I have found in favour of the applicant in respect of the substantive matter it is not necessary for me to address the application in respect of the procedural matter.
11. It has been demonstrated that there was unreasonable behaviour resulting in unnecessary expense as described in PPG by the Council. As a result a full award of costs on this matter is justified.

Costs Order

12. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maidstone Borough Council shall pay to Mr Vincent Woodcock 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.
13. The applicant is now invited to submit to the Maidstone Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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 Cost Office is enclosed.

Kevin Gleeson

INSPECTOR