

Costs Decision

Site visit made on 22 November 2016

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 19th December 2016

Costs application in relation to Appeal Ref: APP/A2280/W/16/3156360 Aquarius, 8 Watson Avenue, Horsted, Chatham ME5 9SH

- 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 Mrs Usha Chottai for a full award of costs against The Medway Council.
 - The appeal was against the refusal of the Council to grant planning permission for development described as 'a first floor extension to form a 'dementia' care suite above the existing care home at Aquarius Residential Care Home'.
-

Decision

1. The application for an award of costs is allowed in the terms set out in paragraph 8 of this decision.

Reasons

2. Planning Practice Guidance (PPG) paragraph 030 advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. PPG paragraph 049 lists a number of types of behaviour that may give rise to a substantive award against planning authorities. It indicates one such behaviour would be to prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. In this regard, the Council found that unacceptable harm would arise as a consequence of the proposed development and that it would fail to accord with its development plan. In respect of the effect it would have on the character and appearance of the locality and the living conditions of future residents with regard to outdoor garden space, I have concurred with the Council's view. On this basis, I find that the Council acted reasonably in this regard.
 4. PPG 049 also indicates that planning authorities may be at risk of an award of costs against them if they fail to determine similar cases in a consistent manner. It is suggested that the Council raised a new issue in its second reason for refusal that had not previously been considered in applications and appeals at the appeal site. However, for the reasons set out in my appeal decision, those previous schemes differed from that before me. In raising this issue, in relation to this appeal application, therefore, I consider that the Council acted reasonably. Furthermore, in identifying conflict with the
-

development plan, on this basis, I consider that the Council properly applied development plan policy¹.

5. Another example of a type of behaviour that may give rise to a substantive award against a local planning authority, set out in PPG paragraph 049, is persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. In this regard, the Council objected to the appeal development on the basis of its impact on on-street parking in the surrounding area. This matter was fully explored by a previous Inspector who dealt with the most recent appeal, which was for a similar but larger scheme². She concluded that it would be acceptable in this regard. In persisting to object to the appeal development on this issue, in the absence of a substantive change in circumstances, I consider that the Council acted unreasonably. Although this matter would not have avoided the need for an appeal, in defending the third reason for refusal, the appellant incurred unnecessary costs.
6. I note that in this appeal application, Members of the Council took an alternative view to that of its officers. The Council's reasons for refusal were based on planning considerations. I have very limited substantive evidence before me to indicate that the reasons for refusal were based on local opposition alone or inaccurate or irrelevant matters. In this regard, I consider that the Council acted reasonably.

Conclusion

7. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and an award of costs, limited to the defence of the issues relating to the third reason for refusal, 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 Medway Council shall pay Mrs Usha Chottai the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in the defence of the issues relating to the third reason for refusal only.
9. 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.

R Barrett

INSPECTOR

¹ Medway Local Plan (2003) Policies CF5 and BNE2.

² Ref APP/A2280/W/15/3135076