



Costs Decision

Site visit made on 21 August 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 11th September 2017

Costs application in relation to Appeal Ref: APP/X2220/W/17/3172337 Part of Wingham Court, Hawarden Place, Canterbury Road, Wingham, Kent CT3 1EW

- 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 Environ Communities Ltd and The Trustees of the Viscount Hayward Will Trust for a partial award of costs against Dover District Council.
 - The appeal was against the refusal of planning permission for a development described as the 'erection of 15 extra care properties (Use Class C2) comprising of 8 semi-detached dwellings, 1 detached dwelling and 6 apartments; conversion and extension of Goose Barn to provide communal facilities to include manager's office, guest suite and activities room; provision of vehicular and cycle parking together with internal access arrangement works and junction improvements; and associated landscape and tree works within the site'.
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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 appellants claim for costs is unclear as to whether this is an application for a full award of costs or a partial award. I have considered the claim on the basis of the information submitted and on the matters introduced by the appellant in the costs claim and costs claim rebuttal. It appears to me to be a claim for a partial award in respect of particular specified matters related to reason for refusal 1 and against all of reason for refusal 2.
4. In relation to reason for refusal 1 the appellant raises concerns that the Council have not produced a conservation area appraisal and thereby set out the matters which contribute to the significance of the conservation area and against which the scheme could properly be assessed. Furthermore the appellant contend that in not doing so the concentration on materials was unreasonably taken forward and the Council did not have appropriate regard to the National Planning Policy Framework and in particular paragraph 60. Finally in the context of reason for refusal 1 the appellant contends that the Council introduced matters related to the effect of the development on trees and had no grounds to do so and provided no evidence to support this contention.

5. In terms of reason for refusal 2 the appellant contends that the Council wilfully mislead the appellant on the issue. The Council could have and should have provided the appellant the opportunity to address the Highway Authority's concerns regarding the access to School Lane and the surfacing of a path within the development. Moreover, it would be reasonable to address these matters by way of a planning condition rather than by a reason for refusal.
6. The Council contends that its assessment of the heritage impacts had full regard to the historic environment within which the development would take place and the reports and assessment set out detail regarding the distinctive character of this part of the conservation area, particular features of significance and the significance of the palette of materials. The officers had visited the site and the application was deferred and a Members site visit was undertaken prior to the second consideration of the application. The Council point out that there is no legal requirement for each conservation area to have an appraisal. Concerning trees this was a matter raised by Members and it is legitimate for Members to raise issues and they do not have to follow the advice of officers.
7. In terms of reason for refusal 2 the Council point to the changes in the scheme removing the direct footpath link to School Lane. The Council re-iterate the advice of the Highways officer and assert that there was a requirement for a surfaced path and access to School Lane. The Council contend that the Highway Authority's comments were open and obvious and the appellant made no attempt to adjust or amend the scheme proposals in the light of those comments and to overcome the concerns expressed.
8. Dealing with reason for refusal 1 first. It would appear that the claim is based on a claim for a substantive award in that there is a failure to produce evidence to substantiate the reason for refusal. However, I find that the Council did make an assessment of the particular significance of the heritage assets affected including the listed buildings and conservation area. The Conservation Officers assessment clearly sets this out as does the committee report. The Council took account of the available evidence and had expert advice. This is consistent with the advice in the National Planning Policy Framework (The Framework) at paragraph 129. Moreover, it took account of the evidence submitted by the appellant, albeit not putting much weight on the assessment they still had regard to it.
9. As the Council note there is not a requirement to produce a conservation area appraisal albeit that there is a requirement to understand the significance of a heritage asset and this they did. I do not find that unreasonable behaviour. Similarly in respect of the Council's assessment of the materials and the contribution they make to the significance of the conservation area. There was a logic and reasonable approach applied and the identification that the material of weatherboarding was not prolific in the area was a reasonable conclusion. I do not see that the concerns here conflict with paragraph 60 of the Framework which states 'It is however proper to seek to promote or reinforce local distinctiveness'. This was not unreasonable behaviour.
10. Finally in terms of reason for refusal 1 the issue of trees was raised by Members in the context of the wider effect of the development on the character and appearance of the wider area and conservation area. This is a matter of judgement and subjective opinion. The Members considered that the loss of a

number of trees in the context of the site would change the character of the site and this was reasonably argued. Whilst there is a Tree report identifying the categories of the trees, and that these were low grade trees, that does not diminish the fact that there is still a judgement to make on their contribution to the character of the area, which is how Members judged it. I do not see this as unreasonable behaviour. In the context of reason for refusal 1 I conclude the Council did not act unreasonably.

11. Turning to reason for refusal 2. The Planning Practice Guidance advises that in terms of procedural matters the Council could face an award of costs if there is a lack of co-operation with the other party. In terms of substantive awards it advises that a Council could face an award if refusing an application on a ground capable of being dealt with by a condition and not reviewing their case following the lodging of an appeal.
12. The issue of the footpath, surfacing and access does appear to be a matter of detail that no matter the detail of when and how the information was found that this could have been addressed either through the submission of amended plans or by the imposition of a suitably worded condition. That seems evident and obvious. Once the scheme was at appeal it also appears there would have been an opportunity for the Council to revisit its reasons for refusal and agree through common ground or suggested conditions that the footpath link could have been secured. In this way the matter could have been taken out of those matters that were contested at the appeal.
13. Open and transparent information on the Consultees responses and drawing relevant matters to the attention of the appellant that are likely to influence the decision are reasonable actions to be expected by an applicant. From the information before me it would appear that there was not the necessary openness and transparency.
14. Overall in terms of the second reason for refusal I conclude that the Council were unreasonable in not dealing with the matter by applying a condition and in reviewing its case when the applicant appealed the decision. The appellant was put to additional expense associated with having to argue and justify that part of the case associated with the second reason for refusal.
15. 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 partial award of costs is justified.

Costs Order

16. 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 Dover District Council shall pay to Environ Communities Ltd and The Trustees of the Viscount Hayward Will Trust, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to reason for refusal 2; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. 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 with a view to reaching agreement as to the amount.

Kenneth Stone

INSPECTOR