



Costs Decision

Site visit made on 21 November 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 29th November 2017

Costs application in relation to Appeal Ref: APP/K2230/W/17/3179791 Drysdale House, Wrangling Lane, Luddesdown DA13 0XF

- 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 Trevor Forrest for a full award of costs against Gravesham Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of a two storey circular rear extension with first floor side extension and including the demolition of numerous outbuildings.
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Decision

1. I allow the application for an award of costs 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 Council did not determine the application although this was a resubmission of a previous application (Ref; 20160268). That was refused by Notice dated 28 July 2016 with the present appeal proposal being submitted on 28 November the same year. The Council did not submit an Appeal Statement or other documents in support of their case, with no resolution forthcoming as to what the Decision would have been.
4. The Council's rebuttal of the Costs Application contained the statement that *'the LPA will be addressing the merits of the case in the main section of this appeal'* but no such document arrived within the timetable allowed at appeal. Earlier in the rebuttal the Council was at pains to point out that no officer indication of approval would have been given at the site meeting that took place, although clearly the appellant was under the impression that permission would be forthcoming. It is clear that the Council had undertaken consultation on this resubmission and third party representation is to hand, including no objections from the Parish Council or the Ward Councillor and only a requirement for a condition from the Scientific Officer.
5. The appellant expresses the view in the Costs Application that the resubmitted scheme met all Development Plan requirements, whilst the Council's view on this is not known. Paragraph: 049 Reference ID: 16-049-20140306 of the Planning Practice Guidance refers to the type of behaviour that may give rise to a substantive award against a local planning authority, including preventing or

- delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations.
6. But, the proposal exceeds the 33.3% requirement of Policy C13(ii) and does not meet the alternative in that criterion of the increased floor-space having no overall effect on the existing bulk and appearance of the dwelling, for the reasons set out in the accompanying Appeal Decision. The Appeal Decision has then gone on to make judgements over criterion (vi) regarding the effect on the existing dwelling and the Green Belt setting, and further judgements on the other harm and other considerations, and therefore whether very special circumstances existed as a result.
 7. Paragraph: 048 Reference ID: 16-048-20140306 sets out when a Local Planning Authority's handling of the planning application prior to the appeal might lead to an award of costs, including explaining why permission would not have been granted had the application been determined within the relevant period. The Council has not made-known what their view is at appeal, and hence has apparently not reviewed their case promptly following the lodging of an appeal against non-determination as part of sensible on-going case management, as set out in Paragraph: 049 Reference ID: 16-049-20140306.
 8. As a result, planning permission may not have been inevitable had the Council determined the case. Nevertheless, in the absence of an Appeal Statement, the Council has not explained, let alone, justified their position. There has clearly been unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense for the appellant, although the comment about resources is noted.
 9. Whilst this Costs Decision is not concerned with the quantum of the costs incurred, it does appear to be the case that the appellant's wasted costs were controlled. The appellant's Appeal Statement of 10 July 2017 started with the words '*no Statement of case has yet been prepared at this stage as the Council have not issued a decision. The attached document is the [Design and Access Statement] that accompanied the application. A full statement will be submitted on receipt of the Council's statement*'. In the event no Council Statement was received and no further statement from the appellant resulted.
 10. Taking all the above into consideration, the conclusion is that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a full award of costs is justified.

Costs Order

11. 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 Gravesham Borough Council shall pay to Mr Trevor Forrest, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Gravesham 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.

S J Papworth

INSPECTOR