



Costs Decision

Site visit made on 10 September 2019

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2019

Costs application in relation to Appeal Ref: APP/A2280/W/19/3231943 Avenue Tennis Club, Glebe Road, Gillingham, Kent ME7 2HU

- 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 Colin Jarvis for a full award of costs against Medway Council.
 - The appeal was against the refusal of planning permission for the construction of eight detached dwellings and associated car parking together with the demolition of the existing extension of no. 26 Second Avenue to allow for adequate access.
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Decision

1. The application for an award of costs is refused.

The submission by Mr Colin Jarvis

2. The submission dated 28 August 2019 was made in writing by Mr Jarvis and received 6 September 2019. Mr Jarvis contends that he sought pre-planning advice in line with guidance in the Framework. At that meeting he received assurances from officers that the proposed scheme was suitable for the site. In his subsequent report the officer recommended approval, but this was overridden by the councillors whom, according to Mr Jarvis, based their decision upon political motives rather than sound planning grounds. This decision caused him to incur unnecessary additional financial expense.

The response by Medway Council

3. The Council responded to the application for costs in writing 13 September 2019. It contended that it was made clear to the applicant that pre-application advice is informal and that it cannot bind the Council in the determination of the proposal. It went on to say that the Committee applied the appropriate procedure in determining the application. The councillors focussed upon the material considerations in considering an application that had been subject to a considerable level of objection from residents. In coming to their decision, they had reasonable and legitimate concerns about the scale of the development proposal and its impact upon local highway safety. Finally, the application was considered within a reasonable time scale.

Reasons

4. Advice on the award of costs for appeals is set out in a Planning Practice Guidance. As is well understood, parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary

- or wasted costs in the appeal process, then they may be subject to an award of costs. Unreasonable behaviour may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
5. In essence, the appellant is alleging there was both a departure from accepted procedure (in that the councillors failed to conduct a proper assessment of the scheme and departed from the officer's advice for improper reasons in making their decision) and there was a failure to have proper regard to the substantive merits of the scheme.
 6. The applicant contends that the pre-application advice failed to identify issues which later resulted in the proposal being refused by the Committee. He argues that had these issues been identified at the pre-application stage they could have been 'ironed-out' prior to submission of the application, obviating the need for the subsequent appeal and the associated costs.
 7. The Government advises in the Framework (paragraphs 39) that early engagement has significant potential to improve the efficiency and effectiveness of the planning application process for all parties. I have no information before me as to exactly what was said at the meeting. I understand that the meeting lasted around 45 minutes. I assume that the proposal discussed was essentially the same as was subject to the appeal (i.e. 6 two-storey and 2 three-storey detached dwellings located on the plots identified in subsequent plans and associated access).
 8. I note that the officer recommended approval of the proposal. However, as the Council states, it is within the statutory powers of the councillors to come to a different view if they conclude on their interpretation that the development plan does not support the proposal or they consider that other material considerations justify overriding the provisions of the development plan. The support of the development plan for backland development set out in policies H4, H9, BNE1 and BNE2 of the Medway Local Plan 2003 is qualified and subject to considerations of the effect of a scheme upon local amenity and highway safety. That stance is consistent with that set out in the Framework at paragraphs 124 and 127.
 9. In this instance, notwithstanding the advice to the contrary by the officer, the councillors determined that the likely effect of the scheme on the living conditions of the current and future occupants of neighbouring properties, on the character and appearance of the area and on the safety of pedestrians and other road users meant that the proposal was inconsistent with the development plan and the Framework. According to the applicant, in arriving at this viewpoint the councillors were motivated by political rather than by planning considerations.
 10. It is not clear what the term 'political' means in the context used by the applicant. In determining a planning application, the law requires councillors to restrict their consideration to relevant planning matters. Where relevant planning matters are raised in representations made by the public, they must give them proper consideration. In this instance the councillors found that the concerns expressed by objectors reflected the qualifications on backland developments set out in the statutory development plan and in the Framework (which is a material consideration).

11. In my decision, I found myself largely in disagreement with the officer and largely in agreement with the councillors. I found that the proposal materially conflicted with the requirements in the development plan and the Framework to respect the privacy of local neighbours, to protect the character and appearance of the surrounding area and to ensure that the safety of pedestrians and other road users was not prejudiced. But in coming to a different assessment to the officer I must acknowledge that there is a degree of subjective judgement in these decisions. Thus, there is nothing to suggest that the officer provided unsound advice to the applicant at the pre-application meeting or to the Councillors in his later report.
12. I found that there was no unreasonable behaviour during the appeal process by the Council.

Conclusion

13. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

William Walton

INSPECTOR

