
Costs Decision

Site visit made on 29 October 2019

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2019

Costs application in relation to Appeal Ref: APP/Z2260/W/19/3235868 15 Minnis Road, Birchington, CT7 9SE

- 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 Julian Hills of Canterbury Diocesan Enterprises Ltd for a full award of costs against Thanet District Council.
 - The appeal was against the refusal of planning permission for detached dwelling and replacement detached garage.
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Decision

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

Reasons

2. An award of costs may be allowed where it is found that a party behaves unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Appellant's case is that the Council have failed to put forward adequate evidence of harm in terms of the lack of defence of and/or supporting evidence for parts of its first reasons for refusal relating to character and appearance. That the second reason for refusal relating to living conditions of existing occupiers is factually inaccurate. Also that the appellant had agreed to mitigate the impacts of the proposed development on the Special Protection Area (SPA) in the form of a financial contribution and as such it was unreasonable to refuse the development on these grounds.
4. The officer's report and appeal statement explain the Council's appraisal of the existing character and appearance of the area and its assessment of the effect of the proposed development on it. This provides an objective analysis and I am satisfied that this reason for refusal has been substantiated at appeal. As such this does not constitute unreasonable behaviour.
5. The evidence submitted by the Council provides an objective analysis of the levels of overlooking that would be created to 6 Surrey Gardens. Whilst it can be seen in my main decision that I do not agree with the Council's conclusion that this level of overlooking would be harmful, this is based on planning judgement. As such it does not render the evidence submitted in this regard as factually inaccurate. I am satisfied that it was not unreasonable for the Council to refuse the planning application on these grounds.
6. I appreciate that the appellant had indicated willingness to enter into a S106 Agreement. However, at the time the decision was made on the planning

application there was no mechanism before the Council to secure any mitigation of the effect of this proposal on the SPA. Therefore, I do not find that the application was unreasonably refused in this respect.

7. In terms of the approach to the Council's lack of 5 year housing land supply, the Council followed the assessment method set out in the National Planning Policy Framework. Consequently, the approach taken was not unreasonable in this regard.
8. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.
9. For this reason, neither a full or partial award for costs is justified.

H Miles

INSPECTOR