



Costs Decision

Site visit made on 11 November 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2019

Costs application in relation to Appeal Ref: APP/A2280/W/19/3234660 Land to rear of 15 - 17 Doddington Road, Gillingham, Kent ME8 6SR

- 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 Roger Dudding for a full award of costs against The Medway Council.
 - The appeal was against the refusal of planning permission for the demolition of 26 lock-up garages and construction of five 3-bedroom town houses with associated parking and refuse storage.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, if it delays development that should clearly have been permitted or fails to substantiate each reason for refusal.
3. The Council's Planning Committee refused the planning application contrary to the advice of the Council's Planning Officers and the pre application advice that had been given. Their concerns relate to the impact the appeal scheme would have on the character and appearance of the area and highway safety, which are matters of acknowledged importance in the planning system. Assessing these points will often involve an element of subjective planning judgment, but any subsequent decision should stand up to objective scrutiny by being sufficiently precise and rational.
4. The Council's reason for refusal clearly explains its concerns, which are an alleged over development of a backland site and a narrow access. The access is narrower than would normally be expected for five homes and the proposed terrace would be in a backland position in an area broadly characterised by frontage development. As such, the Council's concerns are not unfounded and are reasonably precise.
5. The Council's reason for refusal refers to Policy H9 of the Medway Local Plan, which demonstrates the decision was grounded in, and made with reference to, the development plan. It is also clear that the Planning Committee had regard

to the Officer's report as well as the concerns of interested parties, which included the height of the proposed terrace. Moreover, the Council's concerns have been properly articulated in its statement of case. Overall, the reason for refusal is rational and not unreasonably lacking in substance. It therefore follows that the Council has not delayed development that should clearly have been approved or that its concerns were vague.

6. The appellant is concerned by the conduct of the Planning Committee. However, the case was referred in accordance with the Council's scheme of delegation. It was deferred to enable the appellant to make changes, but these were not found to be adequate. The appellant suggests that he was unable to address the planning committee and I can appreciate his frustration on this point, but the rules for public speaking are a matter for the Council.
7. The site may have been sold by the Council in its capacity as landowner as a potential development opportunity, but that should not have been taken as an indication from the Council in its statutory role as the local planning authority that planning permission would have been forthcoming for the appeal scheme.

Conclusion

8. My overall conclusion is that the Council's decision did not amount to a substantive failure within the meaning of the PPG. As such, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR