The Planning Inspectorate

# Costs Decision

Site visit made on 2 October 2019

**by K Stephens BSc (Hons), MTP, MRTPI**

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

**Decision date: 19 December 2019**

**Costs application in relation to Appeal Ref: APP/E2205/W/19/3228040**
**Land to the west of Greenways, Appledore Road, Kenardington, Kent TN26 2LX**

- 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 Smith for a full award of costs against Ashford Borough Council.
- The appeal was against the refusal of planning permission for the erection of one dwelling with repositioned access.

## Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

## Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The applicant contends that the Council knew about the village 'confines' boundaries being made for Kenardington in advance of the determination of the application on 15 April 2019. This was because the applicant had enquired about them and the decision about the village confines was made at a Cabinet meeting on 11 April 2019. As a result, the Council could have held back on issuing the decision until the 'confines maps' had been adopted. In not doing this has caused the applicant the inconvenience of having to appeal.

4. In response, the Council contends that the confines maps became a material consideration on 16 April 2019, the day after the application was determined, and that it made its decision based on the development plan policies at the time.

5. I find it unlikely that the planning officer would not have been aware of the impending adoption of confines maps for some of the villages. The applicant had raised the matter earlier with the officer and agendas for such meetings are usually made public in advance of the meeting.

6. Notwithstanding this, the village confines maps became a material consideration on 16 April, but the Council waited until it submitted its Statement of Case in September to advise the applicant that the site was now within the confines of Kenardington and could be regarded as an infill site.

7. As a result, the applicant proceeded with the appeal to refute the first reason for refusal, although I acknowledge he could have pursued his enquiry about the confines map for Kenardington. Nonetheless, I find the Council acted unreasonably in not advising the applicant of this fact sooner, especially in light of the timescales described above, and not advising the Planning Inspectorate of a change in circumstances. However, this would not have obviated the need to appeal as the second reason for refusal still stood.

8. The applicant also contends the Council failed to determine the application within the 8 week deadline and also within the extension of time agreed until 29 March. The Council should have advised the applicant if the deadline could not be achieved, and the Council has not explained why the application was not determined within the 8 week period or within the agreed extension of time. Notwithstanding this, the applicant could have lodged an appeal against non-determination of the application, but chose not to do so. Therefore, the Council's failing to determine the application within the time period was not the reason the applicant lodged an appeal. Hence, I find a cost claim on this point ineligible.

9. The applicant also refers to the Council finding time to serve a Tree Preservation Order (TPO) before determining the application but did not tell him in advance. Section 198 of the Act[1] allows a local planning authority to make a TPO if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. Whilst it is good practice and helpful for local planning authorities to engage with applicants and advise of all likely reasons for refusal, in order to give the opportunity to respond or provide additional information, there is no duty on them to do so and sometimes it may not always be possible. This does not amount to unreasonable behaviour. Whilst the Council's second reason for refusal relates to the trees and their overshadowing of the site, this is not affected by the trees becoming protected and hence is not pertinent to the claim for costs.

10. However, as I find the Council has acted unreasonably with regard to not disclosing the outcome of the Cabinet decision on the Kenardington 'confines map' sooner, I now need to consider whether this unreasonable behaviour has resulted in unnecessary or wasted expense on the part of the applicant. Both tests need to be satisfied before an award of costs can be made.

11. The applicant submitted their appeal in May, supposedly unaware of the Cabinet decision on the village confine maps in April, just after the application was refused by the Council. The applicant then spent time in preparing for an appeal to defend the first reason for refusal, which he need not have done had the Council advised him sooner. I therefore conclude that the applicant has incurred unnecessary and wasted expense as a result of the Council's unreasonable behaviour in relation to the first reason for refusal.

## Conclusion

12. In conclusion, I have found that the Council has behaved unreasonably and the applicants have incurred unnecessary and wasted expense in defending the first reason for refusal as a result. Therefore, a partial award of costs is allowed.

[1] The Town and Country Planning Act 1990

## Costs Order

13. 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 Ashford Borough Council shall pay to Mr Smith the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in assessing and responding to the Council's first reason for refusal about the site being located outside the built confines of Kenardington.

14. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*K Stephens*
INSPECTOR