



Costs Decisions

Site visit made on 2 December 2019

by J E Jolly BA (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Costs application in relation to Appeal Ref: APP/E2205/W/19/3233466 Boughton Cottage, Mill Lane, Smarden, Ashford TN27 8NN

- 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 LMC Homes Ltd for a full award of costs against Ashford 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 the demolition of an existing bungalow and the erection of two detached chalet bungalows.
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Decision

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

Reasons

2. Paragraph 30 of the national Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably by failing to issue a notice of their decision within the prescribed period due to:
 - failure to provide clear and helpful pre application advice.
 - failure to properly engage to resolve issues in the course of the application.
 - delaying development which should clearly be permitted.
 - failure to substantiate the appeal case.
4. The Council provided pre-application advice to the applicant that was summarised in a letter. The letter included confirmation that the principle of development was acceptable on the application site. However, it also stated that due to its' edge of village location, as well as the overall size, bulk and mass of the dwellings, the proposal was unlikely to be permitted. Indeed, the Council was clear in its' approach; highlighting concerns regarding the overall size of the proposal, Plot 2, and the surrounding pattern of development before advising that; *'the scale, bulk and mass of the proposed dwellings need to be rationalised to result in a less visually prominent, bulky form of development.'* As such the information provided was clear and helpful pre-application advice.

5. As the application could not be determined in the statutory 8-week period an extension of the deadline was agreed by the main parties. The applicant then made several attempts to clarify the Councils' ongoing concerns with the proposal which were discussed as part of a telephone conversation and documented in a subsequent email, including ongoing concerns related to Plot 2. On two occasions the resultant amendments remained of concern to the Council, particularly in respect of Plot 2, and also the cumulative effect of two new dwellings in this location. Accordingly, the time-line provided to me in the evidence demonstrates that the Council engaged with the applicant in an attempt to resolve the issues in the course of the application.
6. Nonetheless, as a formal decision was not in place the applicant submitted an appeal against non-determination. The applicant has highlighted the Councils' timeliness in respect of the application and the Council acknowledges that some delays occurred. However, I concur with the Council that had their advice been fully applied delays might have been avoided.
7. The applicant further contends that a development has been delayed which should have clearly been permitted, and that the Council has failed to substantiate an appeal case. However, in the accompanying S78 Decision I found that Policies SP1, SP2, SP6, HOU3a, ENV1, ENV3a and ENV5 of the Ashford Local Plan 2030 (ALP), which the Council have reasonably relied upon, have been properly applied in respect of the effect of the proposal on the character and appearance of the area. I note the applicants concerns in that they consider that the Council did not substantiate their reasons for an appeal case. However, it is clear from the evidence presented to me that the main parties have sought to substantiate their cases. In this respect the Council has not been unreasonable including its confirmation of a 5-year housing land supply. It follows therefore, that the Council has not prevented a development that should have been permitted.
8. I acknowledge the evidence submitted by both parties. I don't doubt that both parties were seeking to find an acceptable resolution; however, as the Council were carrying out the normal activities associated with a planning application, I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

9. I therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

J E JOLLY

INSPECTOR