
Costs Decision

Site visit made on 6 January 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th January 2020

Costs application in relation to Appeal Ref: APP/G2245/W/19/3239662 Magrose, Kingsingfield Road, West Kingsdown, TN15 6LJ

- 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 B Hampton of Macey Consultancy Ltd. for a full award of costs against Sevenoaks District Council.
 - The appeal was against the refusal of planning permission for demolition of railings, shed, retention walls and Magrose side extension. Erection of a new single storey dwelling and dropped kerb to create new access.
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Decision

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

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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The application for an award of costs is made on both procedural and substantive grounds.
4. The applicant has provided limited detail setting out the reasons he considers the Council behaved unreasonably procedurally. In terms of the substantive issues, the applicant considers that the Council has behaved unreasonably by its refusal of the application thereby preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations and that the Council made vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.
5. The Council gave two reasons for refusal on the basis of the impact on the living conditions in terms of outlook for occupants of Ash Cottage and the harm to the character and appearance. The reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. They also clearly state the relevant development plan policies against which the scheme was found to be in conflict.

6. The first reason for refusal concerned the effect of the development on the outlook for Ash Cottage. The Council's officer report incorrectly stated that the height of the building would be 4.7 metres rather than 2.9 metres. Following the refusal of planning permission, the applicant made the Council aware of this error. The Council responded to this in its Statement of Case where it acknowledged the error but confirmed that the assessment of the proposal was based on the correct height. However, I have no substantive evidence that this is the case. Indeed, given the low height of the proposed building, I am not satisfied that the Council has set out its reason why it considered the correct height of the building would harm the outlook from Ash Cottage. It seems to me that the Council has set out a reason for refusal unsupported by objective analysis. I find that this amounts to unreasonable behaviour.
7. The scheme was also refused because it failed to respect the area's character due to its flat-roofed design. I came to the same conclusion on the basis of the submitted evidence and my own observations about the character of the area and the roof shapes of surrounding development, including those in Kaysland Park which are shallow pitched. I do not find the Council's behaviour has been unreasonable in this respect.
8. I find that the Council has substantiated one of its reasons for refusal relating to character and appearance but failed to provide objective analysis in respect of living conditions. I therefore find that the Council has, in part, acted unreasonably in refusing the application.
9. I turn then to the matter of wasted expense. In lodging the appeal, and in responding to the Council's case, the applicant has had to respond to the Council's reasons for refusal and statement of case. The applicant's response is straightforward and has not involved extra assessment, or indeed anything beyond a short rebuttal. This seems to amount to very little extra work over and above the supporting evidence attached to the planning application. On that basis, it seems to be that the applicant has quickly and easily rebutted the Council's position without wasting expenditure.
10. I therefore find that although the Council acted unreasonably in not substantiating the reason for refusal dealing with the impact on the living conditions of occupiers of Ash Cottage, it has not caused unnecessary expense. An award of costs is therefore not made.

Rachael Pipkin

INSPECTOR