



Costs Decision

Hearing Held on 15 January 2020

Site visit made on 15 January 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Costs application in relation to Appeal Ref: APP/H2265/W/19/3229912 The Nursery, Taylors Lane, Trottiscliffe, West Malling ME19 5ES

- 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 C Luke for a full award of costs against Tonbridge & Malling Borough Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for the erection of a detached bungalow having a floor area of 190m² to replace the mobile home.
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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. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. The crux of the applicant's claim stems from the fact that the appeal should, in their view, have been avoided since planning permission should have been granted. The Council's officers gave a positive recommendation for the scheme, a recommendation that was overturned by members of the Council's planning committee.
4. It is not unusual for the elected members of Council planning committees to go against the recommendation of their officers. From the evidence I have seen, which includes reports to more than one committee sitting and recorded minutes, members were aware of the circumstances of the case, the history and the merits of the proposed dwelling. Whilst clearly disagreeing with the recommendation of their officers, it seems sufficiently clear to me that members have explained their objections, accordingly linking such to the provisions of the development plan and national Green Belt policy. The

statement submitted by the Council's employed representative at appeal then explaining in further detail the substance of members' stance.

5. I accept that the time that was taken for the Council to reach a decision was not what one would call swift albeit the deferral and procedure used to come to a decision, because of the nature thereof, was partly down to how the Council's constitution operates. Which differs from Council to Council. As unhelpful and sometimes confusing and frustrating such delays may be, by its nature this conduct cannot be described as unreasonable for the purposes of a planning appeal costs claim.
6. Whether planning permission should have been granted in this case is a matter of planning judgment. A costs claim could only be awarded in these circumstances where it was so patently clear that development should have been permitted that any other reasonable decision making body would have done so. In effect, the reasons for the withholding of planning permission would be weak and unfounded. The fact that I have reached a different view to the Council's committee members is not an endorsement of that being the case here. Members reached a subjective view on the evidence before them. As have I.
7. I acknowledge that the design, scale and layout of the proposed dwelling has evolved throughout the time that the application was with the Council and that the applicant was guided by officers thereon. There would therefore have naturally been a reasonable expectation that a planning permission would have been forthcoming. But that advice would only be more likely to lead to a planning permission should the decision have been delegated to officers. Which it wasn't in this particular case. It is correct that the reasons for refusal given by the Council conflicted with the view of officers albeit this is to be expected when a positive recommendation is overturned at a planning committee.
8. It seemed clear through both the written costs submissions made by the applicant and concerns raised at the hearing that there remains some ongoing consternation as to the conduct of the Council's members in their consideration of the appeal scheme at the meetings documented. Such as what was said, how it was said, by whom and that materials were not on display as would normally be the case. It remains however that the Council's members, over the course of their consideration of the appeal scheme, had access to detailed material in reports and submissions from the applicant and their officers to be able to come to their own view. I note that the applicant has an outstanding complaint deposited with the Council about these matters and I dare say this is the most appropriate vehicle to seek to resolve such.

Conclusion

9. For the reasons I have set out above, I do not consider that there has been such behaviour by the Council in either their determination of the planning application or conduct during the appeal process so as to amount to unreasonable behaviour and the effects thereof as explained by PPG. An award of costs is accordingly refused.

John Morrison

INSPECTOR