
Costs Decision

Site visit made on 25 August 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 4 September 2020

Costs application in relation to Appeal Ref: APP/U2235/W/20/3253307 3 & 5 Kings Road, Headcorn TN27 9QT

- 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 R Hawkes and Mrs L Alexander for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of outline planning permission for the proposed demolition of two existing buildings and erection of four residential dwellings including details of access (all other matters reserved).
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Decision

1. I refuse the application for an award of costs.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306).
3. The history of the Council's consideration is given and agreed, with a request from Members to reduce the scheme from the stated 4 dwellings to 3, and the Officer's recommendation to grant outline permission for 4 dwellings, based on indicative plans.
4. The Council have addressed the procedural matters referred to in Guidance Paragraph: 047 Reference ID: 16-047-20140306, and whilst there was some apparent delay in the need to consider the Committee's request and go back to a later meeting, that request was not unreasonable, and indicates that the 4 dwelling scheme would have been refusal at that earlier stage. The appellant did not reduce the quantum of development but took the opportunity to submit a revised indicative layout.
5. On the substance of the scheme and the Council's Decision, there has been comment over the detailed nature of the application drawings, but there does not appear to have been any misconception on the part of the Council over the outline nature of the proposals. By the time that the second Committee meeting took place the layout plan was clearly marked as 'indicative'.
6. Committee members are entitled to consider the indicative layout and would have been well-aware that the final layout presented at reserved matters stage

could differ. Nevertheless, against Officer's recommendation, the Committee resolved to refuse the application, citing a cramped form and over-development.

7. The appellant equates this to density, but the alleged failing is more than just the figures; whether above or below 30 dwellings per hectare is not always a fair measure of the visual effect on a small site, and in this case there are on-site constraints such as the access route and the watercourse that further limit the applicability of a density-based appraisal. The reference to Policy DM1 is reasonable, and the Council's Appeal Statement identifies failings over the effect of the proposed development that are covered by items within the policy criteria, as well as national policy on design.
8. The exercise of judgement is required in this type of case, and with only access to be determined in addition to the principle of development, and given the Application Form showing a proposed gain of 4 dwellings each of 3 bedrooms, that judgement was exercised reasonable notwithstanding the Officer's recommendation, and the conclusions of the associated Appeal Decision.
9. As a point of clarification, it is the case that the Council provided at Appendix 3 of their Appeal Statement an update to their Costs Rebuttal, and this would not normally be permitted. The points of fact referred to are available elsewhere in the Appeal documentation, and in any event, in referring to this irregular further rebuttal, the appellant did still have the final word.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not warranted.

S J Papworth

INSPECTOR