



Costs Decision

Site visit made on 5 October 2020

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Costs application in relation to Appeal Ref: APP/P1560/W/20/3250989 Mulleys Farm, Bentley Road, Little Bromley, Manningtree CO11 2PL

- 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 Mrs M Cooper for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for change of use of agricultural and storage buildings to mixed open use (B1, B2 and B8) and the erection of an extension following the removal of a lean-to structure.
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Decision

1. The application is refused.

Reasons

2. The background to the planning application was that the development applied for had already commenced and was subject to investigation by the Council's enforcement officer prior to the planning application being submitted. The Head of Planning recommended that planning permission be granted subject to conditions. However, the Planning Committee refused permission.
3. An enforcement officer who was previously employed by the Council on a contractual basis has submitted a witness statement in which he alleges unreasonable behaviour by the Ward Councillor, who is also Leader of the Council, and other councillors. He says that the Ward Councillor's behaviour influenced the decision that was taken. The appeal could have been avoided if the decision had been made in accordance with the officer's recommendation.
4. The allegations of unreasonable behaviour concern pressure being applied to officers to refuse the application, then subsequently delaying consideration at the Planning Committee to ensure that, following a local election, the committee was configured with councillors who supported refusal.
5. It is claimed that the Ward Councillor e-mailed senior officers to discuss the application and said that the application would be refused at committee. The Council's Head of Legal Services and Monitoring Officer is responsible for ensuring that councillors comply with the Council's Code of Conduct and the Members' Planning Code and Protocol. She states that no e-mail was sent by the Leader to her regarding the planning application, as is alleged. Had any e-mails been sent to other senior officers applying improper pressure, then she would expect these to have been forwarded to her as Monitoring Officer. No such referrals were made. She has seen one e-mail which gave no cause for

- concern. The Monitoring Officer considers that councillors acted properly and in accordance with the Code of Conduct.
6. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG further advises that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded.
 7. It is clearly the democratic role of the Planning Committee to take into account the views of local residents in coming to a decision which may require going against the officer's recommendation.
 8. There was concern expressed by local residents about unauthorised development at the site, and non-compliance with planning conditions. Against this background it is not surprising the Ward Councillor contacted officers to resolve the situation. As the application had attracted significant objections it is also unsurprising that he called the application in for determination by the committee.
 9. The Council's Environmental Protection Officer stated that a noise assessment would be necessary and following this, the applicant undertook a survey and assessment. A decision on the application was delayed allowing for this to be carried out. The noise report was submitted after the local election took place and the final response from the Environmental Protection Officer was provided on 19 June 2019. In addition to the noise assessment, work was carried out by the applicant to demonstrate the parking and turning facilities that could be provided and to provide tracking diagrams. The final response from the highway authority was provided at the same time as that from the Environmental Protection Officer.
 10. Although the decision in October 2019 post-dated the consultees' responses by four months, it has not been demonstrated that this was a result of unreasonable behaviour. In any case, the committee was entitled to depart from the officer's recommendation in making its decision.
 11. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nick Palmer

INSPECTOR