
Costs Decision

Site visit made on 27 October 2020

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Costs application in relation to Appeal Ref: APP/B1415/W/20/3251722 Land at Chiltern Drive, Hastings TN34 3PH

- 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 Park Lane Homes (South East) Ltd for a full award of costs against Hastings Borough Council.
 - The appeal was against the refusal of outline planning permission for the erection of 17 no. terraced houses with parking.
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Decision

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

Reasons

2. Planning Practice Guidance 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 case for Park Lane Homes (South East) Ltd

3. The applicant considers that there has been unreasonable behaviour both in relation to procedural matters and in relation to the substance of the case. The applicant sought formal pre-application advice before submitting the application, receiving a positive response. The subsequent case officer took an entirely different approach and introduced new concerns. The Council acknowledged that the advice given at pre-application stage "*could be interpreted as misleading*" and offered to refund the pre-application advice fee. This resulted in delay in the determination of the application. The application was then suddenly refused under delegated powers whilst the applicant was in the process of seeking a meeting to discuss alternative layouts and viability issues.
4. The applicant considers that the Council failed to substantiate the four reasons for refusal that were ultimately relied on. The issue of viability was only resolved when the Council withdrew its objection at a late stage. Had discussions been allowed to continue, this matter could have been resolved.

The response by Hastings Borough Council

5. The Council accepts that the pre-application advice indicated a favourable outcome. Pre-application advice is given in good faith but is only an officer's opinion, without prejudice to any decision that may be made by the Council on a planning application. The applicant was advised of the Council's concerns at an early stage. There was extensive dialogue during the determination period. The need for viability assessments contributed to the 13 week period being exceeded but the applicant agreed to extensions of time during the application process. The intention to refuse the application was clearly communicated to the applicant. The Council considers that it has substantiated its reasons for refusal.

Conclusions on procedural matters

6. The National Planning Policy Framework is supportive of pre-application engagement, stating that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system. However, Planning Practice Guidance makes clear that pre-application advice provided by a local planning authority cannot pre-empt the democratic decision making process or a particular outcome in the event that a formal planning application is made. In this case the Council's decision was delegated to officers. Even so, it seems to me that the general thrust of that advice applies.
7. The appellant is, understandably, concerned about the disconnect between the pre-application advice and the approach of the officers who dealt with the application. However, I consider that the officers concerned (pre- and post-application) were making a genuine attempt to apply national and local policies to the circumstances of the case, as they saw them. Departing from the pre-application advice was not, in itself, unreasonable behaviour.
8. Once the application had been submitted the Council's concerns were made clear within a reasonable period. The determination period was lengthy but this appears to be a result of efforts on both sides to resolve the differences between the parties. Ultimately the Council decided that the differences were not going to be resolved and it was appropriate to issue a formal decision. My overall assessment is that unreasonable behaviour has not been demonstrated in relation to procedural matters.

Conclusions on substantive matters

9. The Council's first and second reasons for refusal related to the character and appearance of the area. I did not agree with the Council on these matters, for the reasons set out in my appeal decision. However, I consider that the Council had a reasonable case to argue and that it submitted evidence in support of that case.
10. The Council's third reason for refusal related to the proximity of the flank wall of plot 1 to the adjoining dwelling. In my appeal decision I have noted that there would be a flank elevation relatively close to the rear garden boundary of No 4 Upper Broomgrove Road. The effect on living conditions is a matter of planning judgement and I do not think that the Council's view was unreasonable.
11. The Council's fourth reason for refusal related to internal space standards. The Council proceeded on the basis that the floor plans were part of the application.

It is now known that they were intended to be illustrative. However, they were not marked as such and I do not think that the Council can be criticised for approaching the matter as it did.

12. The Council's fifth reason for refusal related to viability and affordable housing. The Council had commissioned appropriate professional advice to review the appellant's viability report. At the time the application was determined there was evidence to substantiate the fifth reason for refusal. Subsequently the applicant updated the viability information and the Council carried out a further review which resulted in this refusal reason being dropped. That was a reasonable approach to take.
13. My overall assessment is that unreasonable behaviour has not been shown in relation to the substance of the case. No award should be made.

David Prentis

Inspector