
Costs Decision

Site visit made on 9 October 20

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Costs application in relation to Appeal Ref: APP/U2235/W/20/3248627 Teiseside Nurseries, Laddingford, MAIDSTONE, Kent, ME18 6BP

- 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 & Mrs R Edmonds for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of existing commercial building and the erection of a 2-storey self-build dwelling (Access being sought).
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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.
3. The appellants have applied for costs under three heads:
 - Failure to engage in process of agreeing content of Unilateral Undertaking (UU),
 - Failure to acknowledge the 'brownfield' status of the appeal site and give appropriate weight to this factor in the balancing of planning issues as a result,
 - Failing to determine similar cases in a consistent manner.

Failure to engage in the process re UU

4. It would appear from the information before me that the appellants chose to provide a draft UU relating to the self-build nature of the proposed dwelling, with a limitation on its occupancy. This was not specifically required by the Council. A draft unsigned copy was submitted to the Planning Inspectorate (PINS) as a part of the appeal documentation.
5. A prolonged email exchange then took place between the appellants and the Council with regard to copies of the UU. The appellants initially committed to sending an original copy of the UU to the Council, but apparently only sent a certified copy. There was then a dispute between the parties as to where an

original copy should be lodged. The Council refers to PINS guidance which states that “the original planning obligation should be held by an officer (a solicitor) of the enforcing planning authority”. The appellants disagreed.

6. There are other issues of dispute between the parties as to procedures and communication, including issues of details within the content matter of the UU, which may not have been clearly communicated by the Council to the appellants. However, the appellants chose to provide the draft undertaking and I see no evidence that the subsequent disputes resulted in any actual delays to the appeal process. I understand the appellants’ concerns regarding the issues of detail and wording of the UU, and I also understand the Council’s position regarding the lodging of an original copy of the UU, particularly given the PINS guidance.
7. On balance, I consider that some aspects of the behaviour of the Council may have been unfortunate, but that it was not unreasonable in the sense of causing any significant delay or expense for the appellants as part of the ongoing planning appeal process.

Failure to acknowledge ‘brownfield’ status

8. The Council contends that the appeal site is not previously developed land in that it is or was last occupied by agricultural or forestry buildings. However, there is evidence that the buildings on the site were granted permission in 1996 for a mixed use, including what would appear to be a commercial use as well as agricultural uses associated with the nursery business. The Council will have been aware of this.
9. The Council notes that even if the site were to be considered previously developed land, that the current application was assessed against the relevant Policy DM5 of its Local Plan (LP), and found to conflict with it. Furthermore, and in any case, the application was refused for two further reasons. However, the officer’s report and the decision notice make no reference to Policy DM5, and there appears to be an assumption throughout that that the site and buildings have an agricultural use only. Whilst there are other reasons for refusal, there remains the possibility that due consideration of the nature of the site at the time may have subsequently influenced the balancing judgement on the application.
10. The PPG indicates that vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis may be considered as unreasonable behaviour. With regard to the issue of whether or not the appeal site should be considered as previously developed land, I find that the Council relied to some degree on generalised and potentially inaccurate assertions about the impact of the proposal and that this constitutes an element of unreasonable behaviour.

Inconsistency

11. The PPG indicates that not determining similar cases in a consistent manner may be considered as unreasonable. In this case, the appellant contends that permission for a housing development in the vicinity of Laddingford on a site that may be considered less accessible than the appeal site, indicates an inconsistent approach by the Council.

12. However, it would appear that the permitted housing development was for a substantial number of dwellings on a site allocated for housing in the LP, and where the contribution of the development to the Council's housing needs was a key factor. The circumstances surrounding this case are markedly different from that of the appellants' proposal and, in view of that, I do not consider that the Council acted in an inconsistent way and that this does not indicate there has been unreasonable behaviour in this regard.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maidstone Borough Council shall pay to Mr & Mrs R Edmonds, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred with regard to failure to acknowledge the 'brownfield' status of the appeal site and give appropriate weight to this factor in the balancing of planning issues as a result; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Maidstone Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J D Westbrook

INSPECTOR