



Costs Decision

Site visit made on 25 February 2021

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021.

Costs application in relation to Appeal Ref: APP/X2220/W/20/3254684 22 Belvedere Gardens, Deal, CT14 9XU

- 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 Eason for a full award of costs against Dover District Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for the erection of a two-bedroom bungalow and associated parking.
-

Decision

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

Reasons

2. The 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 Application

3. Since the council provided no indication of how the planning application would be decided, and had not come to a decision within the prescribed period, there was no realistic choice but to make the appeal.
4. In addition, the council's case used unreasonable and misleading arguments, with an irrelevant reference to a previous appeal decision and reiteration of references to the outbuilding that is not subject of the appeal. When, following the appeal, the matter was referred to committee, the officer's 'leading' recommendation as to what the decision should be when indicating refusal reasons that would have been given, was unreasonable.
5. The Council's handling of the planning application was unreasonable and caused the appellants to waste expense and full costs relating to professional fees incurred in the submission and administration of the appeal, and the time spent by the appellant in discussion and assisting in making the appeal, are justified.

The Rebuttal

6. In response, the council points out that the number of public representations made required the application to be reported to committee. Furthermore, in addition to time taken in undertaking necessary consultation with statutory

undertakers, the Covid-19 lockdown inevitably meant that delay was brought into the process and there had to be prioritisation of matters to bring to meetings being held virtually.

7. The material in the officer's report and in the response to the appeal was appropriate and necessitated by the appellant's action in carrying out the development on the site that now exists and bringing the appeal.

Conclusions

8. As will be seen from my decision issued on this case, I have decided in favour of the appellant on the substantive question of whether the proposed development should be permitted. However, that does not necessarily mean that the claim for costs is justified.
9. I see nothing incorrect in the way that the officer's report to committee was framed. Professional officers are employed to make judgements within their competence and should generally make unequivocal recommendations based on an explanation and reasons. In no sense was the recommendation inappropriate in the way that leading one's own witness on contentious points is wrong.
10. The previous Inspector's appeal decisions that I dealt with in my decision were clearly material, as were the references to the building on the site and how it came about.
11. Unfortunately the planning application was made at a time when the Country began to suffer the full effects of the Covid-19 pandemic. In these unprecedented circumstances, some delay was probably inevitable with, I assume on the basis of general experience, officers working from home. Certainly I cannot find that the council has behaved unreasonably in the circumstances so that it has thereby caused the appellants to incur unnecessary or wasted expense in the appeal process. It would appear, in the light of the refusal reasons with which the council countered the appeal, an appeal would have been necessary had it not already been made for lack of a decision.
12. I therefore conclude, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award for costs is therefore not justified.

Terrence Kemmann-Lane

INSPECTOR