

Costs Decision

Site visit made on 11 March 2021

by C Jack MRTPI MA(TP) MA BSc(Hons)

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Costs application in relation to Appeal Ref: APP/L2250/D/20/3262054 73 Hythe Road, Dymchurch, Romney Marsh TN29 0TJ

- 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 Peter Walsh for a full award of costs against Folkestone and Hythe District Council.
 - The appeal was against the refusal of planning permission for erection of first floor side extension.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary expense in the appeal process. Among other things, all parties are expected to act in a reasonable way, unnecessary appeals are discouraged, and local planning authorities are encouraged to rely only on reasons for refusal that stand up to scrutiny and to not add to development costs through avoidable delay.
3. The application for costs relies to a substantial extent on behaviour by the Council in determining the application including; inconsistent decision making, principally through not granting planning permission for a revised application in which the applicant considered they had addressed the matters raised following a previous refusal; and imposing an additional reason for refusal. The latter planning application, to which the appeal relates, was refused for two reasons - relating to living conditions for neighbouring occupiers and the character and appearance of the area.
4. In this case the reasons for refusal were generally complete, precise, specific, and relevant to the application. They clearly stated the development plan policies that the Council found the proposal to conflict with. The reasons for refusal were substantiated by the Council in its Officer Report, which was later provided in support of its case in the appeal and adequately explained its reasoning for each reason for refusal.
5. The Council must be mindful of the general need to determine similar cases in a consistent manner, and it is apparent that the two applications were similar. However, while some degree of inconsistency has arisen particularly from the additional reason for refusal, this reason relates to character and appearance. Matters relating to character and appearance are very often chiefly subjective,

and it is a normal part of the assessment of a proposal to make subjective planning judgements on such issues, based on the merits of the case and site before the Council's professional officer at the time. A proposal having been prepared in response to an earlier refusal for a similar scheme does not necessarily and in itself lead to a conclusion that it is acceptable.

6. Notwithstanding that I came to a different conclusion to the Council on character and appearance, the development was not one that should have clearly been permitted when having regard to the development plan, national policy, and other material considerations. Rather, it was subjective and a matter of judgement where development plan harm was identified and substantiated by the Council. Furthermore, the appeal was unsuccessful due to the harm that would arise in relation to neighbours' living conditions. I am therefore satisfied that the appeal could not have been avoided and that added development costs from avoidable delay do not apply. The PPG also advises that costs awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.
7. I am satisfied that the Council has put forward sufficient reasoned justification to support its overall conclusion, and that its decision to refuse planning permission was therefore soundly based overall. As a result, I do not consider that the Council acted unreasonably in refusing planning permission in this instance.
8. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified.

Catherine Jack

INSPECTOR