
Costs Decision

Site visit made on 22 February 2021

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2021

Costs application in relation to Appeal Ref: APP/T2215/W/20/3251527 Warner House, Cotton Lane, Stone, Dartford DA9 9BF

- 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 J Perfitt for a partial award of costs against Dartford Borough Council.
 - The appeal was against the refusal of planning permission for a detached house.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance's section on appeals (the PPG) advises that, irrespective of the outcome of an appeal, 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. An award of costs is sought by the applicant and this application has been made on a substantive basis and concerns the Council's third (location of the development) reason for refusal (R/R). The applicant contends that it was unreasonable for the Council to have included the third R/R and that the Council's appeal evidence has not substantiated the inclusion of that R/R. It is contended that the unreasonable inclusion of the aforementioned R/Rs has prevented or delayed development which should clearly have been permitted.
4. The applicant has also made an application for costs from Kent County Council (in its capacity as the local highway authority) concerning the first R/R. That application is subject to a separate costs decision.
5. In determining the appeal, I have concluded that the site would be an appropriate location for an infill dwelling, even though the proposed development would not accord with all aspects of the development plan. The third R/R contends that a disbenefit of the development would be the sustainability of the site as a location for a house. However, I have found that contention has not been substantiated in this instance. Not least because a total of 18 new dwellings have been granted planning permission by the Council, spread across two permissions, metaphorically within a stone's throw of the appeal site. Sixteen of those dwellings benefitting from a permission

granted in March 2014, which post-dates the adoption of the Dartford Core Strategy (the CS).

6. As I have highlighted in the appeal decision, in locational terms there would be very little, if anything, differentiating how the occupiers of the proposed house would access everyday services and facilities compared with the situation for the occupiers of the previously mentioned 18 houses. The Council's appeal evidence has not demonstrated why this part of Cotton Lane should now be looked as being locationally unsuitable and warranting the withholding planning permission. There is then the matter of planning permission having been granted for the sub-division of 1 Warner House into two dwellings under application reference DA/18/01501/FUL.
7. The Council's approach to the appeal proposal exhibits inconsistency in comparison to the way other cases in this part of Cotton Lane have been handled by it. I consider that the Council's appeal case has not substantiated why a locational concern became a reason for refusing planning permission. I am therefore of the view that the applicant in responding to the third R/R has incurred some unnecessary and wasted expense.
8. The applicant has contended that the Council should have identified the development as being in accordance with Policy CS4 (Ebbsfleet to Stone Priority Area) of the CS. I find it unsurprising that the Council made no reference to Policy CS4 in its committee report, given the very modest scale of the proposal relative to the quantum of development being planned for in the priority area, amongst other things 7,850 new homes. I therefore consider that nothing turned on the absence of a reference to Policy CS4 in the Council's committee report, with this development plan policy only being of tangential relevance. Put another way had Policy CS4 been referred to, I consider it very unlikely that the third R/R would not have gone onto form part of the Council's decision. The references to Policy CS4 in the applicant's appeal case did not assist my deliberations and I therefore consider those parts of the applicant's case should be excluded from any award of costs allowed against the Council.

Conclusions

9. Having regard to the provisions of the PPG, most particularly paragraphs 028, 030 and 049, I conclude that it was unreasonable for the decision to refuse planning permission to have included the third R/R. The inclusion of the third R/R resulted in the applicant incurring some unnecessary and wasted expense in responding to that R/R. A partial award of costs against the Council is therefore justified. However, for the reasons given above I consider the costs incurred by the applicant relating to his inclusion of the references to Policy CS4 should not be borne by the Council.

Costs Order

10. 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 Dartford Borough Council shall pay Mr J Perfitt, the costs of the appeal proceedings relating to the third reason for refusal, excluding the expense incurred with including the references to Policy CS4 of the Dartford

Core Strategy in the applicant's case; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Dartford 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.

Grahame Gould

INSPECTOR