The Planning Inspectorate

Cost Decision

Site visit made on 20 April 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State.

Decision date:19th May 2021

Costs application in relation to Appeal Ref: APP/U2235/W/20/3262071
Stilebridge Kennels, Stilebridge Lane, Linton, ME17 4DE

- 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 Freeman for a full award of costs against Maidstone Borough Council.
- The appeal was against the refusal of planning permission for demolition of all existing kennels and cattery buildings, erection of four dwellings and landscaping.

Decision

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

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. Examples of unreasonable behaviour which may result in an award of costs include refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal

3. The appellants consider that the appeal was unnecessary and as a result of the Council's unreasonable behaviour in relation to its handling of the application, whereby information relating to the district licensing scheme was not made available to them and neither were they alerted to the need to consider protected species despite entering into pre-application discussions.

4. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. In this case the appellant was also made aware of the need to submit a Phase 1 Ecological survey. I therefore have no firm basis to conclude that the informal advice given was so misleading as to amount to unreasonable behaviour on the part of the Council.

5. The evidence before me indicates that Kent County Council Ecological Advice Service issued their comments on 8 September 2020 and that these were available on the Council's public access system prior to the determination of the application. These comments set out the need for further information, including surveys and mitigation measures for Great Crested Newts, Otters and Water Voles. This correspondence also indicates that district level licensing

could be utilised for Great Crested Newts but does not provide any further information to the applicant as to how this can be obtained. This is an unfortunate oversight, but overall the comments were clear in explaining the need for further information prior to the determination of the application.

6. In addition, the appellant was professionally represented and advised and therefore the Council would reasonably expect to take a light touch approach within their response, with regard to the need to take into account protected species, which would be likely to be present given the proximity of the development to both a pond and river.

7. In addition, the Preliminary Ecological Appraisal commissioned by the appellant also recommends further survey work and makes reference to the district level licensing scheme. The Council was therefore following the advice in the appellants own report regarding the need for further surveys and therefore these concerns would not have come as a surprise to the appellant.

8. Accordingly, I do not consider that the Council failed to properly evaluate the application or that a more helpful approach, in terms of signposting of relevant information, would have resulted in the appeal being avoided altogether. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the application for costs is refused.

G.Pannell

INSPECTOR