



Costs Decision

Site visit made on 11 May 2021

by Stewart Glassar BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Costs application in relation to Appeal Ref: APP/U2235/W/20/3258563 Newlay Farm, Scragged Oak Road, Detling, ME14 3HN

- 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 Maidstone Borough Council for a full award of costs against Mr M Wight.
 - The appeal was against the refusal of planning permission for the construction of a single storey log cabin for use as occasional holiday let, with associated oil tank and sewage treatment plant (Part retrospective).
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Decision

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

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. As the applicant, the Council contend that given the previous appeal decision and its similarities with the current proposal, there was no reasonable prospect of the second appeal succeeding.
3. The appellant notes that the Council had the option to decline to determine the application. It is suggested that by accepting it as a valid application and proceeding to determine it, the Council were acknowledging the differences between the proposals and thus, by implication, the reasonableness of the second submission.
4. It would indeed have been open to the Council to decline to determine the application if it was obviously so similar to the previously dismissed appeal scheme. However, it is not always possible to know whether there are sufficient differences between schemes at an early stage. Specifically, validation.
5. In this case, in addition to the necessary forms and drawings, the most recent planning application was also accompanied by a supporting statement. The statement raises a number of points in support of the second proposal and makes references to, and comparisons with, the previous planning application and appeal decision. It also raises the issue of tourism and the economic benefits of the development, given that the revised scheme introduced a holiday use element into the considerations.
6. It therefore seems to me, that the Council were perfectly reasonable in not invoking Section 70 of the Town & Country Planning Act 1990 (as amended)

when validating the application. This enabled them to take the time to fully assess the points being made and the acceptability or otherwise of the revised scheme. Having done this, it is not unreasonable for them to determine the application.

7. On close inspection, it is clear that the information submitted in support of this second proposal does not stand up to detailed scrutiny. The information is generic in relation to the tourism/economic development benefits and very limited in relation to landscaping. The size and position of the building remained unchanged. The Council make their position clear in this respect in the Officer report. The report was available to the appellant before they chose to submit an appeal.
8. There is nothing in the provisions of Section 70 which indicate that by accepting and determining an application, a Council is prevented from subsequently claiming costs if a second appeal is submitted. Furthermore, Planning Policy Guidance indicates that a 'recent' appeal decision in respect of a very similar development where circumstances have not changed can be grounds for an award of costs. The Planning Policy Guidance does not seek to limit or define 'recent' or link it to the timescales in Section 70.
9. Given the physical similarities between the two schemes, the limitations of the additional information put forward, together with the strength of the concerns raised by the previous Inspector, it was reasonable to foresee that the second appeal would fail. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 Mr M Wight shall pay to Maidstone Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mr M Wight, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stewart Glassar

INSPECTOR