

Costs Decision

Site visit made on 23 June 2021

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 July 2021

Costs application in relation to Appeal Ref: APP/M2270/W/20/3271510 The Vicarage, Waterloo Road, Cranbrook TN17 3JQ

- 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 Julian Hills of Canterbury Diocesan Enterprises Limited for a full award of costs against Tunbridge Wells Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for alterations to vicarage and erection of three detached houses.
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Decision

1. The application for 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.
3. It is agreed that the appeal site is allocated for approximately 4 dwellings and therefore the principle of a residential scheme is not in dispute. However, it does not follow that any specific application for housing will be acceptable or that a scheme for 3 houses should be rejected. As all applications must be determined on their individual merits, the determining factor is whether the proposal complies with the other requirements of the development plan.
4. The application was due to be determined by 11 August 2020. The case officer emailed the agent explaining that the application was unacceptable on 28 July 2020 and made suggestions as to how it could be amended. However, the appellant chose not to engage with negotiations or to await the formal decision. Instead an appeal was lodged against non-determination on 12 August 2020.
5. The officer report, dated 16 September 2020, analyses the proposal and provides cogent reasons why the scheme was unacceptable and would have been refused had the appeal not been lodged. The conservation officer raised significant concerns about the layout whilst recognising that the effects on the trees was likely to be a determining factor. It can be seen from my appeal decision that I agreed with the Council's assessment and found harm to the significance of designated heritage assets of both the Conservation Area and the setting of Waterloo Terrace, a group-listed building.

6. The Council did not behave unreasonably in its assessment of the proposal, which it analysed on its individual merits having regard to the provisions of the development plan and the National Planning Policy Framework. On the contrary it attempted to engage with the appellant to consider changes that could have allowed an amended scheme to proceed.
7. Both the Core Strategy and the Framework advocate effective use of land and providing homes that meet local need. The evidence indicated that the most pressing housing need is for small homes. In this situation it is not unreasonable for the Council to find conflict with its suggestion that a scheme providing 2-3 bedroom homes would be likely to be considered more favourably than one for 5-bedroom homes. The fact that this was not the proposal that the appellant wished to pursue does not amount to unreasonable behaviour on the Council's part.
8. I do not consider that the reasons the Council would have refused the scheme contradicted each other. They are separate issues which the report dealt with independently but brought together in the summary towards the end of the report. The appellant was informed of the outcome of the Council's assessment of the scheme before the statutory period had ended and could have chosen to withdraw the application or consider amending it at that point in the process, rather than pursuing the appeal.
9. I therefore conclude that there were not undue delays during the application process. The Council did not behave unreasonably by failing to grant planning permission for development that should otherwise have been permitted. As the appellant chose to pursue the appeal to test the Council's assessment, rather than prepare an alternative scheme, unnecessary or wasted expense in the appeal process has not been incurred. It therefore follows that an award of costs is not justified.

Sheila Holden

INSPECTOR