



Costs Decision

Site visit made on 3 August 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 OCTOBER 2021

Costs application in relation to Appeal Ref: APP/A2280/W/20/3255000 2E Luton Road, Chatham ME4 5AA

- 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 Lanre Abudu for a full award of costs against Medway Council.
 - The appeal was against the refusal of planning permission for a change of use of A1 (shop) to C3 (residential) with associated alterations to the shop frontage.
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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.
3. The appellant claims that the Council, in refusing the resubmitted application, acted unreasonably which resulted in costs being incurred by the appellant in taking the proposal to appeal. Specifically, the appellant considers that the Council was not proactive in either providing the appellant with opportunities to address the Council's concerns or responding to communications from the appellant. In a wider sense, the appellant also considers the decision to be inconsistent with other decisions taken by the Council.
4. Paragraph 38 of the Framework¹ encourages proactive engagement to help approve applications for sustainable development where possible. Paragraph 39 of the Framework notes that part of this engagement can include such things as the provision of pre-application discussions.
5. The Design & Access Statements which accompanied the planning applications confirm that the appellant did not take advantage of the Council's pre-application advice service. This is corroborated by the Council. The Council cannot enforce the use of such a service but equally cannot be criticised for not being proactive if such a service is available, as appears to be the case here, but potential applicants do not avail themselves of it. Had the appellant engaged with the Council at this stage he would have been better placed to appreciate the policy context and the Council's views/requirements.

¹ National Planning Policy Framework (2021)

6. It is clear from the Officer reports that the Council had an in-principle objection to the loss of a commercial unit within the Luton Road Local Shopping Centre. Given that the site clearly fell within this designation there was always a strong possibility of an in-principle objection to the proposed scheme and thus the likelihood of the Council seeking amendments would be low. In such a situation, to put the appellant to additional work would have been abortive and unfair. When all of these factors are balanced against the requirements to determine applications in a timely fashion, I consider that the Council acted reasonably in not seeking further information from the appellant.
7. The appellant suggests that a condition requiring additional information to support the viability claims could have been applied to a planning permission and this would have been in some way proactive. Notwithstanding my findings in relation to Policy R10, it would be unreasonable to have a condition assessing the acceptability of a use which has, by virtue of the substantive decision, already been permitted. This is very different from seeking details pursuant to a permitted use.
8. There may have been some miscommunication within the Council that led to the first decision being issued before the appellant was made aware of the recommendation. However, given the appellant's further comments to the Council's costs rebuttal, even had the appellant been offered an opportunity to submit further information and had accepted it, it seems likely that it would have been the information contained within the second planning application. There is no reason to assume the outcome would therefore have been any different and an appeal would still have ensued. Whilst it may have resulted in one, rather than two appeals, it was the appellant who chose to appeal both decisions, despite them being identical schemes. Whilst this was a path open to the appellant, it would be unreasonable to penalise the Council for the appellant's decision.
9. The appellant points to the lack of response to the email of 5 May 2020, following the first refusal of planning permission, as further indication of a lack of engagement. However, the email starts by saying it is for information, and nowhere in the email is there a suggestion that a response is being sought. Notwithstanding the prevailing Covid-19 situation at that time, given the wording in the email, a lack of any response by the Council is understandable.
10. The appellant refers to several schemes which the Council are said to have determined more flexibly than the appeal scheme with regard to Local Plan policy. Although I do not have the full details before me, they all appear to be major schemes for which the planning balance would no doubt have been entirely different to that of the appeal scheme. I do not therefore consider them to be comparable examples that necessarily proves inconsistency in decision making by the Council.
11. Given the above, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified in this case.

Stewart Glassar

INSPECTOR