
Costs Decision

Site visit made on 11 October 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2021

Costs application in relation to Appeal Ref: APP/U2235/W/21/3266837 Land to East of Chapel Lane, Bearsted, Maidstone, ME14 4PQ

- 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 McGregor for an award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for residential development of 2 detached dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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 applicant's contention is that the Council went against the recommendations of its own pre-application advice and did not fully consider all of the planning application details. For these reasons the applicant considers that the Council has acted unreasonably and has incurred the unnecessary time and associated cost of the appeal process.
4. Whilst the applicant accepts that the pre-application advice would not produce a formal planning determination it is asserted that the underlying message of the advice was that support was offered toward the erection of two dwellings at the appeal site. It is acknowledged that elevation drawings did not support the pre-application advice submission but it is contended that these aspects of the proposal could have been negotiable. In subsequent communications between the parties the Council directed the applicant to its complaint procedure which the applicant suggests indicates the Council may consider a complaint justified.
5. The Council advises that pre-application advice is given in good faith and to the best of ability without prejudice to the formal consideration of a planning application. It is pointed out that the advice suggested that a two dwelling scheme would have a greater chance of success, however, this does not indicate that it would be supported. It appears to me from the evidence before me that the Council's pre-application advice is only advice and is not binding. No proposed elevations were before the Council for consideration; therefore, the full details of the proposal were not before the Council at that stage. It is open for the Council to reach the decision that it did in respect of the

subsequent planning application, given full details of the proposed were before the Council at that stage.

6. The applicant contends that the second reason for refusal, as set out on the Council's decision notice, is spurious and incorrect in substance in respect of its conclusions on the impact upon the North Downs Area of Outstanding Natural Beauty (AONB). This required the applicant, planning consultant and landscape architect to counter this reason for refusal. The applicant contends that he has demonstrated that there would be no harm to the AONB and the appeal site is not visible from it.
7. The Council comment that the officer delegated report sets out the Council's consideration of the planning application and relevant development plan policies. It sees no grounds that would indicate or support the claim that the Council has acted unreasonably in terms of the process through which the decision was taken.
8. I am satisfied that the Council has set out its justification for refusing the planning application, both within its officer delegated report and decision notice. It has considered the impact of the proposed development upon the setting of the Kent Downs AONB and assessed the proposal against the relevant development plan policies. The fact that there is disagreement between parties in respect of the impact upon the AONB does not mean that this amounts to unreasonable behaviour on the Council's part.
9. I have been directed to other site allocations that would be visible from the North downs AONB, one of which I note to be an allocated site which has come forward through the appropriate development plan assessment process. However, its allocation does not justify other development simply because that development can be seen from the AONB. I have noted in my decision letter that a future new Local Plan is at a very early stage and could be subject to change. Any new site allocations put forward at this stage could be subject to deletion or change so very little weight, if any at all, can be attributed to them as justification for other development.
10. Ecology and noise reports were submitted in support of the planning application. In view of the Council's other concerns relating to the proposal the noise report was not considered. This is a matter of Council's discretion, albeit it does not appear to me that matters pertaining to ecology and noise are in contention and are unlikely to have changed the Council's determination.
11. The 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. I do not consider that any of the matters raised and discussed above would have obviated an appeal in this case.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Nicola Davies INSPECTOR