
Costs Decision

Site visit made on 17 November 2021

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/H2265/W/21/3272074 1 Green Lane, Trottiscliffe, West Malling ME19 5DX

- 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 Mrs J Dosanjh for a partial award of costs against Tonbridge and Malling Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing one storey bungalow to enable erection of a semi-detached five bedroom dwelling.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) states that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expenditure in the appeal process. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to issues arising from the merits of the appeal.
3. The appellant accepts that it was open to the Council's planning committee to come to a different view to the case officer on the design merits of the scheme. The appellant is seeking a partial award of costs, on the basis that the Council did not substantiate the allegations of harm to the Area of Outstanding Natural Beauty (AONB) and harm to the living conditions of the occupants of the neighbouring property.
4. The Council's decision notice contained a single reason for refusal which covered matters of character and appearance as well as an alleged impact on the residential amenities of the occupiers of the neighbouring property. The appellant's approach to the costs application is founded on the assumption that the Council's objection in relation to the AONB was, in effect, a freestanding reason for refusal.
5. However, the appeal related to a single residential plot within an established residential area that is washed over by the AONB. In this context, the concepts of design quality, impact on the street scene and impact on the landscape quality of the AONB are closely entwined. The appellant rightly accepts that committee members were entitled to differ from the officer's report on the design merits of the proposal. I have commented in my appeal decision that the proposed rear gable would be readily visible from the public footpath along

Green Lane and that the proposed design would introduce a new element into the street scene. Although I have not agreed with the Council's conclusions, in my view the design objection raised was a reasonable exercise of planning judgement. In the particular circumstances of this case, it was not necessary for the Council to carry out a separate analysis in relation to impacts on the AONB.

6. The reason for refusal also alleged that the proposal would have an unduly overbearing impact on the neighbouring property. However, I have found that there would be an unexceptional relationship between the adjoining houses. The Council has not identified anything unusual or particular about the design of the proposal, the design of No 2 or the layout of the houses and their respective gardens that would result in an unduly overbearing or enclosing effect. This limb of the reason for refusal was not supported by evidence. Reference to the proposal being to the south of No 2 was not pertinent, for the reasons given in my appeal decision.
7. It was unreasonable to include an unsubstantiated allegation of harm to the living conditions of the neighbouring occupiers. That unreasonable behaviour led to unnecessary expense, in that the appellant had to prepare a longer appeal statement than would otherwise have been the case. A partial award of costs is therefore justified.

Costs Order

8. 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 Tonbridge and Malling Borough Council shall pay to Mrs J Dosanjh the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the allegation that the proposal would be harmful to the residential amenities of the occupants of the neighbouring dwelling, such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Tonbridge and Malling Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Prentis

Inspector