
Costs Decision

Site visit made on 10 November 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 December 2021

**Costs application in relation to Appeal Ref: APP/A1720/W/21/3279162
Land between and to the rear of 56-66 Greenaway Lane, Warsash,
SOUTHAMPTON, SO31 9HS**

- 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 GR Dimmick, CD Dimmick & AW Williams for a full award of costs against Fareham Borough Council.
 - The appeal was against the refusal of outline planning permission for up to 28 dwellings together with associated landscaping, amenity space, parking and a means of access from Greenaway Lane.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. The applicants submit that the Council behaved unreasonably by failing to justify its reasons for refusal, by relying on conjecture and assumption rather than evidence and by making a decision that was irrational and unreasonable. The applicants suggest that the Council prevented development that should clearly be permitted; that it failed to provide evidence to substantiate its decision; and that it made vague, generalised or inaccurate assertions about the proposal's impact.
4. The proposal received officer support when it was presented to the Council's Planning Committee. Elected members are of course entitled to take a contrary view to an officer recommendation and may be able to apply a greater level of local knowledge to the assessment of a proposal.
5. The minutes of the Council's Planning Committee provide no details of how elected members reached a decision contrary to the recommendation proposed by officers. The Council's statement of case does not provide evidence to substantiate its reason for refusal in light of the findings and conclusions of the Transport Statement or Transport Appeal Statement submitted by the applicants. In the context of this substantial evidence to the contrary I find that

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

the Council's finding of harm to highway safety is generalised and unsubstantiated. The specific reference to limited streetlighting is inaccurate as the lane is served by regularly positioned streetlights along its whole length that have been recently upgraded.

6. Further refusal reasons relate to the absence of a legal agreement, which would have been secured prior to the grant of planning permission had the Council's elected members accepted the officer's recommendation.
7. I therefore find that the Council acted unreasonably by refusing the application for reasons that were unsubstantiated, generalised and inaccurate. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicants. It is clear that the applicants have incurred unnecessary and wasted expense by lodging the appeal against a refusal that should have reasonably been permitted. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is 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 Fareham Borough Council shall pay to GR Dimmick, CD Dimmick & AW Williams, 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.
9. The applicants are now invited to submit to Fareham 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.

A Tucker

INSPECTOR