



Costs Decision

Site visit made on 5 January 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2022

Costs application in relation to Appeal Ref: APP/C1435/W/21/3273790 Springfield, Green Lane, Crowborough TN6 2BX

- 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 John Penfold for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for the 'demolition of existing dwelling, replacement of approved and implemented additional dwelling, and erection of 6 new semi-detached dwellings'.
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Decision

1. The application for a full award of costs is not allowed, but a partial award of costs is allowed in the terms set out below.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The planning application which is the subject of the appeal decision referred to in the heading of this decision was considered by the Council's Planning Committee North on two separate occasions (17 September 2020 and 10 December 2020). On each occasion, the recommendation of the Council's planning officers was to grant permission. The Planning Committee North deferred its decision at the first meeting for negotiations to be undertaken with the applicant, on a without prejudice basis, seeking amendments/further information on several points.
4. The applicant made changes to the proposal and explained how they considered the changes had addressed the Planning Committee North's concerns in a letter to the Council dated 11 November 2020. The applicant therefore seeks a full award of all costs incurred in proceeding with the appeal, which they consider was unnecessary.
5. The Council claim the applicant has failed to provide any evidence of unreasonable behaviour, and as they have not clearly demonstrated how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense, any award of costs would be contrary to the advice contained within the PPG.

6. I have found the Council's reasons for refusing planning permission were unjustified, and although the second main issue (Character and Appearance) addressed a subjective matter, the Council's decision notice did not take the prevailing character of the area into account when criticising the proposal's design, massing, layout, and relationship to boundaries and neighbouring buildings. The Council's objections in respect of the third and fourth main issues (Living Conditions and a Protected Tree) were not supported by any detailed explanations or evidence, and ignored the applicant's fallback position, which had been clearly explained in the officer report and was referred to in the Arboricultural Implications Assessment. The Council's appeal submissions lacked sufficient detail to demonstrate its decision to refuse planning permission was based on reasonable concerns.
7. Securing appropriate financial contributions towards mitigation measures in respect of the first main issue (the Ashdown Forest Special Protection Area) was a matter for the applicant to address prior to the submission of the appeal. The Council were not required to raise this issue within their decision notice or act on behalf of the applicant in this regard, but their officer report clearly explained that financial contributions towards mitigation measures would need to be secured through a planning obligation prior to the issue of any planning permission.
8. Notwithstanding the applicant's failure to address the first main issue, the Council's behaviour in refusing planning permission based on their objections in respect of the second, third and fourth main issues of the appeal decision was unreasonable and led to the applicant incurring unnecessary expense in the appeal process. The applicant's costs application was brief, but read alongside their other appeal submissions it contained the necessary detail to demonstrate they had incurred unnecessary and wasted expense in the appeal process in respect of the second, third and fourth main issues set out in my appeal decision. An award of costs to cover the expenses incurred by the applicant in contesting the Council's refusal reason in its decision notice is therefore justified, although any costs associated with the appellant contesting the first main issue of my appeal decision are not justified.

Costs Order

9. 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 Wealden District Council shall pay to Mr John Penfold the partial costs of the appeal proceedings in terms of the second, third and fourth main issues, as set out in my appeal decision.
10. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

L Douglas

INSPECTOR