
Costs Decision

Site visit made on 1 February 2022

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Costs application in relation to Appeal Ref: APP/J2210/D/21/3288422 25 St Mary's Grove, Seasalter, Whitstable, CT5 4AB

- 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 Stephen Munday for a full award of costs against Canterbury City Council.
 - The appeal was against the refusal of planning permission for dormers to front and rear elevations together with alterations to the roof, 3 No. rooflights and use of garage as additional accommodation.
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Decision

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

Reasons

2. The *Planning Practice Guidance* (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses.
3. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, failing to produce evidence to substantiate each reason for refusal on appeal, use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and not determining similar cases in a consistent manner. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The Applicant's claim is made on substantive grounds and alleges that the Council's decision demonstrates insufficient regard to its own Development Plan policies notably DBE3 and DBE6. The applicant further argues that the Council failed to have sufficient regard to a recent approval (application ref: CA/21/00943) where the Council approved a residential development with similar, if not inferior, separation distances. As a result of these shortcomings, the Applicant has incurred the unnecessary and additional expense in the preparation of the appeal.
5. The Council has responded by saying that the decision to refuse planning permission was made by the Planning Committee which is not bound to accept

officer advice and can reject it if they consider there to be valid planning reasons for doing so. Moreover, the Planning Committee applied the relevant development plan policies and considered that the rear dormer windows, by virtue of the nature of the fenestration would result in unacceptable overlooking of the neighbouring property at 25c Preston Parade. In terms of other approvals in the area, the Council point out that each application is considered on its own merits and for the reasons given, the appeal scheme was considered to be unacceptable.

6. As is evident from my appeal decision, I have found the Council's stance in relation to the appeal scheme to be flawed. I accept that the application was refused by Members contrary to the advice of its professional officers. Whilst it is a fundamental principle of local decision making that a planning committee is not bound to follow the advice of its officers, there is a reasonable expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. That very clearly did not happen in this case.
7. Whilst I accept that the Planning Committee did debate the proposal, beyond a vague and unsubstantiated reference to '*the nature of the fenestration*' and '*distance from No 25c*' the minutes supplied by the Council fail to explain how Members came to reject the Officer's logical and well-reasoned recommendation. Despite assertions to the contrary, no meaningful evidence was forthcoming at the appeal stage to support the reason for refusal.
8. The above failings were compounded by the Council's notable failure to grapple with the other consented developments in the immediate area, most notably the four dwellings immediately adjacent to the appeal site. It is therefore axiomatic that the Council has been inconsistent in its approach to separation distances. The Council cannot simply explain these inconsistencies away by hiding behind the oft-repeated adage '*each application on its merits*'.

Conclusion

9. Overall, I find that the Council's submissions in this case were bereft of substantial evidence. The reason for refusal patently failed to stand up to scrutiny on appeal and this means that the Council's decision was injudicious and relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence. There is also compelling evidence to suggest the Council has not determined similar cases in a consistent manner.
10. 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

11. In the 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 Canterbury City Council shall pay Mr Stephen Munday the costs of the appeal proceedings described in the heading of this decision.

12. The Applicant is now invited to submit to Canterbury City 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.

D. M. Young

Inspector