



Costs Decision

Hearing (Virtual) held on 1 March 2022

Site visit made on 3 March 2022

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Costs application in relation to Appeal Ref: APP/V2255/W/21/3272760 Land lying to the south of Dunlin Walk, Iwade ME9 8TG

- 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 Swale Borough Council for a partial award of costs against BDW Kent.
 - The appeal was against the refusal of planning permission for 20 residential dwellings with means of access approved and all other matters reserved on the land lying to the south of Dunlin Walk, Iwade, as identified on the indicative layout.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. On the basis of the submitted costs application, I understand that the applicant (the Council) considers that BDW Kent (the appellant) acted unreasonably by submitting the two additional illustrative plans on 31 January 2022 rather than earlier.
3. The appeal resulted from the Planning Committee determining the planning application contrary to officer recommendation. Therefore, when submitting the appeal, the only published detail available to the appellant which set out the Council's official concerns was the reason for refusal on the Decision Notice. Although the refusal reason refers to the lack of a turning area at the eastern end of the site, it was thus not until the Council's appeal statements had been submitted that the appellant had a comprehensive understanding of the Council's position.
4. The appellant could perhaps have provided the additional illustrative plans sooner than it did. However, the appellant's appeal statement sets out why it considered that a turning area at the eastern end of the site was not necessary. It was also not unreasonable for the appellant to submit the additional illustrative plans after it had a more informed understanding of the Council's concerns, even if that meant that the Council had by then engaged the services of a consultant to prepare a written submission to help defend its position at appeal. In addition, the submission of the additional plans did not result in an adjournment of the hearing or any further preparatory work by the Council.

5. Furthermore, with the appeal proposal made in outline, there was no obligation on the appellant to provide any illustrative plans in any event or to show a turning head solution even if it is common practice to do so. Therefore, while such plans can be helpful, it would not have constituted unreasonable behaviour for the appellant to have not produced the additional illustrative plans that it did. In such circumstances, the Council's servicing-related concerns would presumably have remained unresolved and thus the issue would have taken up more time at the hearing than it did. However, as it happens, the additional illustrative plans submitted prior to the hearing resolved part of the Council's refusal reason. As such, the timing of the submission of the additional plans was not unreasonable and instead saved time at the hearing, benefitting all parties.
6. The appellant could have sought to discuss the Council's concerns in detail after the Planning Committee resolved to refuse the planning application and before the appeal was made. However, it was not incumbent on the appellant to do so. It seems to me that the Council could equally have approached the appellant to discuss potential resolutions to its concerns if it wished to narrow the issues at appeal and avoid engaging a consultant to defend its position.
7. The earlier submission of an illustrative layout showing that a turning area at the site's eastern end could be provided as part of the proposed development could have resolved the Council's servicing-related concerns earlier. This may have meant the Council did not engage the services of a consultant, and indeed the issue may not have arisen at all were such a plan available before the Council made its decision on the planning application. Be that as it may, the illustrative plans showing such a turning area were submitted – not unreasonably – shortly before the hearing, while the lack of such a plan was not unreasonable given the appeal was made in outline. Furthermore, the submission of the additional plans, in an attempt to overcome part of the Council's concerns, was ultimately helpful to all parties at the appeal.
8. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR