



Costs Decision

Hearing Held on 27 April 2022

Site visit made on 27 April 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th May 2022

Costs application in relation to Appeal Ref: APP/A2280/W/21/3284718 Avenue Tennis Club, Glebe Road, Gillingham ME7 2HU

- 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 Glen Jarvis of Jarvis Residential (Medway) LTD for a full award of costs against Medway Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Proposed reduced scheme consisting of 3No three bedroomed and 3No four bedroomed dwellings with two detached Garages and associated parking, access road and open landscape area.
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Decision

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

Procedural Matter

2. The hearing was held in relation to two appeals on the same site for similar developments. This costs application was made in advance of the Hearing against for Appeal B only. No further submissions were made to this application at the Hearing. I have considered the application in relation to the evidence advanced insofar as it relates to Appeal B only.

Reasons

3. Paragraph 16-028-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 16-049-20140306 of the PPG states that examples of unreasonable behaviour include failure to produce evidence to substantiate reasons for refusal, vague, generalised, or inaccurate assertions about a proposal's impact unsupported by any objective analysis, and, persisting in objections to elements of a scheme which an Inspector previously indicated were acceptable.
4. The costs application sets out the grounds upon which the appellant considers the Council acted unreasonably. The appellant is of the view that the Council made a decision against the planning officer's advice and recommendations despite the site being sustainably located, exceeding national space standards and the Council's garden size and separation distances in guidance, and the

appellant addressed the concerns of a previous Inspector for a dismissed appeal. On this basis planning permission should not have been refused.

5. The sustainability and location of the site was not disputed by the Council or a reason the Council refused planning permission. The national space standards I have been referred to in evidence relate to internal space, which was also not a matter in dispute. They are considerations that I have found are neutral matters attracting neutral weight. Therefore, the Council has not behaved unreasonably in this regard.
6. The development exceeds the Council's standards for garden sizes, depths, and separation. However, it was clarified at the Hearing that these are set out in the Council's Medway Housing Standards (interim) Adopted November 2011 to ensure satisfactory living conditions for future and neighbouring occupiers. The Council did not find the development unacceptable in this regard. Exceeding the standards does not necessarily mean a development would be acceptable in relation to its effect upon the character and appearance of the area.
7. The Council was clearly aware of the findings in the most recent appeal decision through the reference in the Committee report. Such a decision is a material consideration, but the Council is not bound by previous appeal decisions¹. The previous Inspector did not make a specific finding upon matters such as the depths of the gardens, the layout, or the scale of the dwellings. Therefore, it is unclear whether these were found to be acceptable.
8. The Council is entitled to disagree with officer advice and come to an alternative view, so long as it is a well-reasoned judgement on the planning merits of the development. As a matter of judgement, it found this revised development was significantly harmful to the character and appearance of the area in respect of the layout, scale, footprint, garden size.
9. As a matter of planning judgement, I have come to a different view for the reasons I have set out. However, overall, I find the Council's reasoning for the refusing planning permission is adequate in respect of the aforementioned matters. Therefore, whilst overall, I disagree with the planning judgements, the Council has not behaved unreasonably or irrationally in coming to the conclusions it ultimately reached. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense is not demonstrated.

Conclusion

10. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Dan Szymanski

INSPECTOR

¹ Refs. W/4000728 and APP/A2280 /W/19/3231943.