
Costs Decision

Site visit made on 10 May 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Costs application in relation to Appeal Ref: APP/Z2260/W/21/3286847 104 Northdown Road, Margate CT9 2RE

- 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 S Mayhew of Maybank Homes for a partial award of costs against Thanet District Council.
 - The appeal was against the refusal of planning permission for the erection of detached commercial unit to rear of site fronting Clifton Place.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. The applicant claims that the Council has acted unreasonably for two reasons.
3. Firstly, when assessing the effect of the proposal on the character and appearance of the area, the Officer Report refers to Policy QD03 of the Thanet District Council Local Plan 2020 (the Local Plan) which relates to living conditions. This has been carried through into the decision notice.
4. Secondly, the Officer Report references the comments from the Council's conservation officer on a previous application for a different use and form of development but does not reference their comments on the scheme in question. Furthermore, reason for refusal one relates to the effect of the proposal on the Conservation Area. However, the conservation officer did not object to the proposal, and it is not clear from the Officer Report that there are substantive reasons to override their views.
5. The applicant claims that additional time has had to be spent seeking to refute reasons for refusal and statements in the Officer Report that are incorrect. The Council disputes these claims.
6. The Officer Report refers to the relevant Policy QD02 of the Local Plan under the heading 'Character and Appearance'. It is unfortunate that the incorrect policy reference is used in reason for refusal one on the decision notice. However, the wording of the refusal reason is precise, specific and relevant to the application. It also refers to relevant paragraphs of the National Planning Policy Framework. The reason has been substantiated by the Council in its

Officer Report. Taking the Council's reasoning on this matter as a whole, it is clear what its concern was and why it formed a reason for refusal. Therefore, the Council has not acted unreasonably in this regard.

7. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
8. The matter in reason for refusal one is one of judgement. Whilst it may be relatively uncommon to refuse an application on heritage grounds when the conservation officer has not objected, the Council's planning officer was entitled to take a different position to the professional advice, so long as a case on planning grounds could be made for a contrary view.
9. The Officer Report sets out the views of the conservation officer on the proposal under the heading of 'notifications' and in the main body of the assessment. It is therefore clear that the conservation officer had no objections to the proposal.
10. The Officer Report acknowledges that the proposal is for a different use to the previous application. The differences between the two schemes are also highlighted. The Officer Report identifies that the proposal is almost identical to the building proposed in the previous application in terms of scale, height, massing and general appearance. It is clear from the Officer Report that it is because of those close similarities that the conservation officer's previous comments in respect of scale, height, massing and design were considered to be relevant to the proposal.
11. In reading the Officer Report as a whole, it is evident that there was not an error in referring to the conservation officer's comments on the previous application. Rather, these comments were considered to be applicable to the proposal in so far as they related to those elements of the previous application that were almost identical. The Officer Report and the reason for refusal explain why the proposal was considered to be unacceptable and this is framed within the context of the development plan.
12. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I find this to be the case here, notwithstanding the fact that I have come to a different conclusion to the Council regarding the acceptability of the proposal with regard to this matter.
13. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

F Wilkinson

INSPECTOR