
Costs Decision

Hearing Held on 27 April 2022

Site visit made on 26 April 2022

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8th June 2022

Costs application in relation to Appeal Ref: APP/V2255/W/20/3244340 New Acres, Spade Lane, Hartlip ME9 7TT

- 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 full award of costs against S, M and P Maughan and others.
 - The hearing was in connection with an appeal against the refusal of an application seeking to vary a condition attached to a planning permission.
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Decision

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

The submissions for the Council

2. The Council's submissions were made in writing prior to the Hearing and were not added to at the Hearing

The response by the appellants

3. The appellants' response was made in writing prior to the Hearing and was not added to at the Hearing.

Reasons

4. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only 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.
5. The original temporary planning permission was granted by means of an appeal (Ref: APP/ V2255/C/16/3165246) granted on 31 October 2017, as set out in my main decision and running for 3 years. Condition 4 required certain actions within 3 months of the decision date. The Council challenged the appeal decision and the appellants decided to hold-off taking any action pursuant to its requirements in order to await the outcome of the challenge. However, during that process, the Council indicated to the appellant that the 3 months compliance period for condition 4 had expired, contrary to the appellants' understanding that matters would be on hold during the legal process. Without accepting the Council's position, the appellants submitted an application to vary the time limit of condition 4 so that suitable details could be submitted and

resolved. The application was made in March 2018. The Council held off determining the application while the legal challenge to the original decision was on-going. Once that was resolved in January 2019, the Council reported the application to its relevant committee with an officer recommendation for approval. The Council resolved to refuse the application at its committee meeting on 7 March 2019. After some delay, the Council issued a decision notice dated 17 May 2019, indicating that planning permission was granted. Eventually, this error was rectified by the Council seeking to quash its own decision notice. On 27 November 2019, the decision notice was quashed and on 12 December 2019, the Council issued a corrected decision notice refusing the application; this is the subject of this appeal. The appeal was made on 7 January 2020.

6. The Council has indicated that the appellants' benefit from a successful appeal would have been limited in time, due to the expiry of the 3 year permission on 30 October 2020. The appellant has indicated that they had requested that the appeal be determined by the written method in the hope of a swift decision. Unfortunately, for numerous reasons, none of which are the fault of the appellants, including the Covid 19 pandemic, matters did become protracted. However, at the time that the appeal was made, there may have been some realistic hope on the appellants' part that planning permission could be granted and that some benefit may arise from any approval. I understand the appellants stated position that their interests would be maintained if an appeal were to have been successful. In this respect, and notwithstanding the eventual outcome of the appeal, I do not consider that the appellants were unreasonable in exercising their option to appeal against the Council's decision.
7. The appellants had also hoped that some matters of principal would be resolved in the determination of the appeal; including whether matters should be put on hold if a decision is the subject of a challenge. If an appeal had been determined, this would not be an unreasonable hope, in my view. The Council states that this is not the purpose of the appeal process. Whilst it may not be the primary purpose, there are numerous examples of clarity of law and process being provided by appeal decisions as a consequence of the main purpose of determining planning appeals.
8. The Council also comments that the 3 propositions set out by the appellants in their statement are irrelevant and amount to unreasonable behaviour. I consider these as additional arguments for the appellants' case which seek to add strength to comments already made. They provide some background and the appellants views on certain matters. Whilst the Council do not agree with them, they are nevertheless appropriate submissions for this appeal.
9. For the reasons set out above, I find that the appellants have not acted unreasonably in their submission of the appeal and in the contents of their case. Therefore, the conditions necessary for the award of costs has not been satisfied.

T Wood

INSPECTOR