



Costs Decision

Site Visit made on 7 June 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2022

Costs application in relation to Appeal Ref: APP/U1430/W/21/3279250 Coombe Cottage, Ewhurst Lane, Northiam, East Sussex TN31 6PD

- 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 Gavin and James Pierce for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for 'demolition of existing bungalow and the construction of four residential units. Provision of new driveway and eco -sewer system.'
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant refers to the lack of communication with the Council during the application process, and the extended length of time taken to make a decision.
4. The delay in the determination of the application was significant, and the absence of any meaningful communication from the Council during that period would have been frustrating. This behaviour conflicts with the advice in the PPG which states that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. However, based on the evidence, it is highly unlikely that better communication or a faster determination would have enabled the appeal process to be avoided altogether.
5. The applicant considers the Council's final decision to have been rushed. While I cannot comment on whether that was the case, nonetheless, the Council's reasons for refusal are complete, relevant to the application and make reference to the development plan. The Council's officer report and appeal statement adequately substantiate these reasons. The officer's report does not specifically refer to the proposed living roofs and eco-sewer and does not refer to the responses that were made by the applicant to local objections. Despite this, the officer report does consider the overall design of the proposed buildings and state that regard was had for local Policy DEN5 regarding sustainable drainage. The officer report also carried out a planning balance of

relevant considerations before reaching its conclusions and the decision notice makes clear that the decision was based on documents including details of the green roof and sewage treatment system. Again, there is no indication that the Council would have reached a different finding had they been explicit in considering these matters.

6. Accordingly, while I have not agreed with all of the Council's conclusions on the appeal scheme, I do not consider that the Council failed to properly evaluate the application.
7. The applicant received pre application advice from the Council, and amended the scheme in attempt to address the Council's concerns. While the subsequent outcome of the application would have been disappointing, the refusal of planning permission does not constitute unreasonable behaviour. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors.
8. Fundamentally, the information before me indicates that planning permission would have been refused even if the application had been determined sooner. Consequently, I find that there was not unnecessary or wasted expense incurred through entering into the appeal process.
9. While the applicant incurred indirect costs from the extended application process, the PPG is clear that costs cannot, in any event, be claimed for the period during the determination of the planning application. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal.

Conclusion

10. While aspects of the Council behaviour during the application process were unreasonable, the expense of the appeal process was not unnecessary or wasted. As such both parts of the test set out in the PPG have not been met. Consequently, the application for costs is refused.

C Shearing

INSPECTOR