The Planning Inspectorate

# Costs Decision

Site visit made on 17 August 2022

**by David Smith BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25th August 2022**

**Costs application in relation to Appeal Ref: APP/U2235/W/22/3291481**
**The Rectory, Church Road, Harrietsham, ME17 1AP**

- 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 Canterbury Diocesan Enterprises Ltd for a full award of costs against Maidstone Borough Council.
- The appeal was against the refusal of planning permission for residential development with all matters reserved except access.

## Decision

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

## Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance advises that 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.

3. An example of when an award may be made against a local planning authority includes preventing development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Another is the failure to produce evidence to substantiate each reason for refusal.

4. In applying development plan policies, the Council was entitled to take as the 'starting point' that the appeal site is outside Harrietsham as defined by its settlement boundary. It nevertheless acknowledged that it backed on to this area. In any event, this was not a reason for refusal but rather the impact of the proposed development on the pattern of local development and the rural character and setting of the Kent Downs Area of Outstanding Natural Beauty.

5. As far as this objection is concerned, the Council explained why it considered that harm would occur. I have come to a different view and some of the expressions used to justify the stance taken was somewhat exaggerated. However, that is not the same as taking an unreasonable position, especially when such issues involve making a judgement.

6. The Council did not assess pedestrian facilities in the vicinity of the site incorrectly as the roads are largely unlit and pavements are not available in the *immediate* locality of the site. Given that the appellant's own transport statement reached a similar view, it was not unreasonable for it to conclude that future occupiers would be more likely to rely on the use of private

transport to carry out their daily activities. However, I have found that alternatives exist and that this would not undermine the spatial strategy.

7. It was also reasonable for the Council to take into account the appeal decision at East Street given that it was concerned with a similar issue on the edge of Harrietsham. The inaccuracy in plotting the appeal site on the map in the delegated report and the reference to that site being similarly located in relation to the settlement boundary was unfortunate but no more than that. In practice, officers would have been aware of the relative locations of both sites. Overall it is evident that this was properly treated as a material consideration which guided the decision made by the Council.

8. The Council understandably confirmed that it has a five year housing land supply in place but did not give this as a reason for resisting the proposed development. Instead this meant that paragraph 11 d) of the National Planning Policy Framework did not apply. Given that in the Council's view the proposal did not accord with an up-to-date development plan, the presumption in favour of sustainable development in paragraph 11 was not triggered.

9. Therefore unreasonable behaviour has not occurred and there has been no unnecessary or wasted expense as a result. An award of costs is unwarranted.

*David Smith*

INSPECTOR