

Costs Decision

Site visit made on 22 August 2022

by Martin Andrews BSc(Econ) MA(Planning) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Costs application in relation to Appeal Ref: APP/L2250/W/22/3290772 Land rear of 2 Willop Close, Dymchurch, Kent TN29 0HU

- 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 Saltwood Estates Ltd for a full award of costs against Folkestone & Hythe District Council.
 - The appeal was made against the refusal of planning permission for the erection of two three bedroomed dwellings and associated parking.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance first published in 2014 and subsequently updated online explains that costs will normally be awarded when unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The thrust of the appellant's claim for the Council's alleged unreasonable behaviour is that the Council's Planning and Licensing Committee has been inconsistent in its determination of the appeal application; took 13 months to reach its decision; chose to ignore the clear advice of the officers, and failed to provide any credible evidence to support the reason for refusal.
 4. From my appraisal of the application and appeal files it is clear that the three postponements of the committee were solely for further clarification and information as to site drainage and flood risk – indeed the officer's final report says this in paragraph 5.1. The appellants therefore had a reasonable expectation that after a period of 13 months since the application was submitted it would be approved, given that there is no reason for refusal relating to these matters.
 5. Instead, the application was refused on an issue of 'residential amenity' dealt with by officers in their original report and apparently accepted by Members at that time, as the deferrals related only to site drainage and flood risk. I acknowledge that the issue of the effect of development on residential amenity is not entirely straightforward. Indeed, I have recognised that the outlook and privacy of existing residents will be affected to some degree as is inevitable with infill housing. I am also aware that the committee had to take into account of the strong objections of nearby residents.
 6. However, I have endorsed the officer's judgement and for the committee to refuse the application on the residential amenity issue some six months after
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first deferring it for other reasons is in my view unreasonable, especially bearing in mind that after the March 2021 committee the appellant would not have reasonably expected a refusal.

7. In its defence of the costs application the Council argues that the appellants had a right to appeal against the Council's failure to determine the application within the statutory period. However, this would have caused even more delay (as indeed has now occurred). And given that the officer's report dealt thoroughly and professionally with the application and that there was a firm prospect of the outstanding matters being resolved, this would not have been a logical option for the appellants to choose.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Folkestone & Hythe District Council shall pay to Mr J Jones, Saltwood Estates Ltd, the costs of the appeal proceedings described in the heading of this Decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Folkestone & Hythe District Council, to whom a copy of this Decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Andrews

INSPECTOR