
Costs Decision

Site visit made on 10 October 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date 10 November 2022

Costs application in relation to APP/U2235/W/22/3291603

The Three Ashes, Boxley Road, Walderslade ME5 9JG

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by M Worsfold for a full award of costs against Maidstone Borough Council.
 - The appeal was against the grant of outline planning permission subject to conditions for residential development (consideration of access only).
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) 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. Unreasonable behaviour can be considered as either substantive or procedural in nature.
3. It sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by imposing of a condition which does not comply with the guidance in the National Planning Policy Framework (the Framework).
4. The applicant claims that they were put to unnecessary and wasted expense in making the appeal due to the substantive behaviour of the Council as:
 - The imposition of condition 3 is unreasonable as this assessment should take place as part of the reserved matters submission given that scale is a reserved matter; and
 - By imposing a maximum height, the condition was not precise.
5. While a statement of case was not provided by the Council, I acknowledge the Council's committee report contains considerable discussion, appraisal and analysis of the site and the associated visual and landscape impacts. The applicant also provided indicative drawings setting out the general parameters for built form and these informed the imposition of condition 3.
6. However, the outline application sought to establish the principle of residential development on this site, and the access to it. The plans were provided for indicative purposes only and should not be treated as part of the formal

proposal. Their purpose was to demonstrate that an acceptable scheme could be brought forward at reserved matters stage.

7. At the outline stage the actual number, size, form and shape of the development are not under consideration. By imposing condition 3 the Council has consequently acted unreasonably by seeking greater control than is reasonable at the outline stage.
8. In respect to the maximum height restriction attached to condition 3, I note that the site slopes with a considerable difference in the height of the land from the rear of the developable area to the front. There is some ambiguity as to where the maximum height is intended to be measured from or whether this would allow for excavation reasonably required for the development. I therefore find the condition in its approved wording lacks precision.
9. As such, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Maidstone Borough Council shall pay to M Worsfold the costs of the appeal proceedings described in the heading of this decision.
11. The applicants are now invited to submit to Maidstone Borough 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. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

N Praine

INSPECTOR