
Costs Decision

Site visit made on 15 November 2022

by R Naylor Bsc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Costs application in relation to Appeal Ref: APP/G2245/W/21/3285344 New Tyehurst Farm, Cowden Pound Road to Truggers Lane, Mark Beech, Edenbridge, Kent, TN8 7DA

- 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 Lee Witchell for a full award of costs against Sevenoaks District Council.
 - The appeal was against the refusal of planning permission for the Proposed Conversion of Agricultural Barns into 12no. Residential Units, including the Demolition of 2no. Existing Residential Units and Construction of 2no. Replacement Dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance (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 procedural, or it can relate to the substance of the matters under consideration as part of the appeal.
3. The applicant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers and refused the application based on erroneous planning considerations. The applicant further contends time delay also constitutes unreasonable behaviour.
4. In this case, I have noted the recommendation of the Council's Officers. However, this is a matter of judgement. Though the recommendation was to approve the scheme, the refusal of planning permission by the Planning Committee at the application stage does not necessarily represent unreasonable behaviour. The Council members in this case were entitled not to accept the professional advice of officers so long as a case could be made for the contrary view. The Council considered the development in respect of the surrounding area and was reasoned in its analysis. Whilst I have reached a different view on these matters, this is based on a balanced view of the evidence overall. It follows that I am satisfied that the Council has shown that it was able to substantiate its reasons for refusal.
5. The applicant has also expressed concerns regarding time delays during the application process, and the extended length of time taken to make the decision. Whilst this was frustrating to the applicant, there is no substantive

evidence that the applicant incurred any additional expense as a result of this delay.

6. The final matter relates to the suggestion of the Council's tardiness, during the application stage, to enter into a legal agreement to secure affordable housing. The applicant also refers to the matter only being resolved at the 'eleventh hour' in the run up to the appeal. If the legal agreement had been negotiated and agreed during the application stage, there would have been no need for refusal reason No 4.
7. As frustrating as this situation may have been for the applicant, progress was ultimately made and so this behaviour does not amount to a lack of cooperation on the Council's part. Furthermore, the applicant would have incurred costs even if discussions on the legal agreement had concluded much earlier in the process. Therefore, I cannot conclude that the Council had behaved unreasonably in the procedure leading up to the appeal.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, the application for costs is refused.

Robert Naylor

INSPECTOR