



Costs Decision

Site visit made on 22 November 2022

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2022

Costs application in relation to Appeal Ref: APP/V2255/W/22/3296580 Greystone, Bannister Hill, Borden ME9 8HU

- 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 Ashbyrne Homes Ltd for a partial award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for Demolition of existing property and erection of 2 Five bedroom dwellings with associated parking and private amenity space
-

Decision

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

Reasons

2. 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. The decision notice issued by Swale Borough Council (the Council) gives 2 seasons for refusal, the second of which relates to requirements to provide site lines for the purposes of public safety on the highway and concomitant adjustments to landscaping and boundary structures adjacent to the highway. The council have concluded that these adjustments would create a development which would detrimentally impact the current appearance of this rural site and would negatively affect the setting of the Borden-Harmen's Corner Conservation Area, concluding that the harm to which would be less than substantial.
4. This reason for refusal is in fulfilment of Members' decision to refuse the application following a site visit. Although this decision did not follow the recommendation of officers for approval of the application, the decision makers were entitled to come to a different conclusion.
5. However, the appeal site shown on the submitted plans includes the newly constructed roadway area of the driveway/close that already provides access to two existing new detached houses, which form a separate development. This existing driveway/close would provide access to the proposal, however, the design for the driveway/close and its junction with Bannister Hill shown on the submitted plans appears to show a junction layout previously approved as part

of the earlier approval¹. This was for the development of the two existing new houses that are accessed from the close, the details of which were conditioned and subsequently approved. Although the proposal does appear to include a slight widening of the roadway of the close away from the junction with Bannister Hill, the design of this junction would remain as approved and as substantially completed.

6. The proposal does not, therefore, include any additional adjustments to this junction beyond those already approved as part of another planning approval and that has been substantially implemented. The Council have also not provided any material that would indicate why the proposed addition of a single additional dwelling on the appeal site would result in an increase in traffic which would require any adjustment to the approved design of the junction of the driveway/close with Bannister Hill.
7. As no changes to the junction of the driveway close with Bannister Hill are proposed or necessary, no harm the character and appearance of the local area or to the setting of the Borden-Harmen's Corner Conservation Area would result from the proposed development.
8. The applicant's appeal statement made this position clear and sought to clarify this aspect of the proposal, which they stated had resulted in an error being made with regard to the second reason for refusal given by the Council in the decision notice. Despite the clarifications given by the applicant, the Council have not taken the opportunity to withdraw their second reason for refusal to correct the mistakes in their assessment of the proposal in this regard. Therefore, the appellant has unnecessarily had to address these issues as part of their appeal.
9. 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 partial 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 Swale Borough Council shall pay to Ashbyrne Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the second reason for refusal given in the Council's decision Notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Swale 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.

Victor Callister

INSPECTOR

¹ Planning Ref: 17/504348/FULL