



Costs Decision

Site visit made on 8 November 2022

By H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2023

**Costs application in relation to Appeal Ref: APP/U2235/W/22/3297370
2 Loddington Lane Cottages, Loddington Lane, Boughton Monchelsea,
Maidstone Kent ME17 4AD**

- 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 Richard Brigden for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the proposed conversion of existing cottage together with a two storey rear/side extension to create 1 No. two bedroom dwelling and 1 No. three bedroom dwelling. Erection of 1 No. detached four bedroom dwelling.
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Decision

1. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. In the context of an award of costs, unreasonable behaviour may be either procedural or substantive. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis.
2. The evidence indicates that an earlier planning application for the same development (21/500798/FULL) was refused on the grounds of insufficient ecological information. The applicant therefore commissioned an ecological survey and resubmitted the application to the local planning authority. Contrary to officer recommendation, Members resolved to refuse planning permission on the grounds that the proposal would harm the character and appearance of the area, including designated heritage assets together with the impact to local biodiversity.
3. The applicant's cost application therefore centres on the fact that the Council, in refusing permission acted unreasonably, and introduced unfounded refusal reasons beyond the original ecology objection. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

4. The Council's evidence confirms that the Boughton Monchelsea Neighbourhood Plan (BMNP) was adopted by the Council in July 2021, following the determination of the original application and prior to the re-submission of the appeal proposal. In refusing the original application on biodiversity grounds alone, no harm to the significance of designated heritage assets or the character and appearance of the area was identified. The national and local planning policies relating to these considerations have remained consistent throughout and were not replaced by the BMNP. Although it is an additional consideration, the BMNP does not significantly alter the policy background relative to those two issues. Accordingly, as the policy background has not changed significantly, I find the Council were unreasonable in introducing the 3 additional refusal reasons.
5. In turning to the fourth refusal reason, the biodiversity officer concluded that, based upon the ecological report, sufficient evidence had been submitted to demonstrate no harm to protected species subject to appropriate conditions including biodiversity enhancement measures. Nevertheless, the Council's reason alleges harm to biodiversity through fragmentation and disturbance and further indicates that there would be no net gain to biodiversity. In reaching this decision however, the Council rely on unsupported subjective analysis and has not demonstrated with any clear evidence how the proposal would have a negative impact on biodiversity. I therefore find that the Council were unreasonable to persist with the refusal reason.
6. For the above reasons, it appears to me that having regard to the provisions of the development plan, national policy and other relevant considerations, the development should reasonably have been permitted.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that an award of costs is justified.

Costs Order

8. 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 Mr Richard Brigden, the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

H Wilkinson

INSPECTOR