



Costs Decision

Site visit made on 6 December 2022

by Robert Naylor Bsc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 JANUARY 2023

Costs application in relation to Appeal Ref: APP/M3645/W/21/3287596

1 Loxford Road, Caterham CR3 6BH

- 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 Mrs Bettina Neumann for a full award of costs against Tandridge District Council.
 - The appeal was against the refusal of outline planning permission for demolition of existing buildings and erection of between 4 and 7 replacement dwellings with associated access, parking and landscaping.
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Decision

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

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 refusing the application, it failed to substantiate their reasons for refusal and made vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis following a pre-application enquiry.
4. The advice contained in the Councils pre-application letter set out some principles that could be applied to the proposed development stating that there was no in principle objection to development within the back land site but gave no firm indication of the quantum of development that would be acceptable. However, the Council did clarify that a pair of semi-detached units or a single detached dwelling, located at the rear of the site could be appropriate subject to a sensitive design.
5. The first reason for refusal clearly states that the Council considered the scheme as an overdevelopment of the site, due to the number of units proposed. Both indicative layouts 1 and 2 contains a higher quantum of development (two detached and three semi-detached units respectively) than the pair of semi-detached units or a single detached unit as stated in the letter. Subsequently, the proposed schemes would contradict the advice of the pre-application letter that a less dense development would be of a more appropriate scale and design.

6. Furthermore, I find in reaching a decision the Council did consider the development in respect of the surrounding area and was reasoned in their analysis. As such I am satisfied that the Council has shown that it was able to substantiate this reason for refusal.
7. However, as seen from my decision letter I disagree with the Council's second and third reasons for refusal. The pre-application advice states that sensitive design could reduce the impact on the visual amenities of the area, and on the amenities of residents in neighbouring properties. The advice further highlights that a qualified ecologist would be required to avoid harming habitats and offer biodiversity enhancements.
8. I accept that pre-application advice constitutes the informal opinion of an officer of the Council based on the information submitted and does not prejudice any decision the Council might make subsequently following the submission of a formal planning application. However, the formal application was not determined by committee, but under delegated authority, where a degree of consistency would be expected.
9. Given that the application was made in outline with all matters reserved except for access, this allowed for more detailed design to further assess any overbearing and privacy impact from the development at the reserved matters stage. Furthermore, the applicant did submit a Preliminary Ecological Appraisal (PEA) and a Preliminary Roost Assessment (PRA) with the scheme which provided biodiversity protection and enhancement recommendations, as suggested by the Council.
10. Paragraph 049 of the PPG states 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 unreasonably refusing a planning application and failure to produce evidence to substantiate each reason for refusal on appeal. Whilst I appreciate that the scheme is in outline only, and that overbearing and privacy effects cannot be fully assessed at this stage, the PEA and PRA clearly highlight that biodiversity and habitats can be protected and enhanced through appropriate measures, and the Council has provided no evidence to the contrary. This should not have formed a reason for refusal and the appellant therefore was put to unnecessary expense in providing evidence avoiding harming habitats and providing biodiversity enhancements.
11. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Conclusion

12. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in providing a PEA and PRA is justified.

Costs Order

13. 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 Tandridge District Council shall pay Mrs Bettina Neumann the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's third reason for refusal, which

concerned the alleged inadequate consideration of biodiversity and ecology matters in relation to this development.

14. The applicant is now invited to submit to the 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.

Robert Naylor

INSPECTOR