
Costs Decision

Site visit made on 4 January 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Costs application in relation to Appeal Ref: APP/C1435/W/21/3289619/ Land to the rear of The Walled Garden, Five Ash Down, TN22 3AG

- 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 Rookwood Trinity Ltd for a partial award of costs against Wealden District Council.
 - The appeal was against the refusal of outline planning permission for development of site for up to 33no dwellings with amendments to existing access.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. The Council's action in respect of withdrawing two of its refusal reasons accords with the PPG, which establishes that persisting in objections to a scheme which an Inspector has previously indicated to be acceptable and not determining similar cases in a consistent manner may give rise to a substantive award of costs. It acted quickly by presenting the case afresh to its members and then soon after updating its position to the Inspectorate. This incurred significant additional work for the appellant; however, this was a necessary part of the process and should not be considered unreasonable behaviour on the part of the Council.
4. The change in the Council's position by withdrawing two of its three refusal reasons was a significant shift. There is no evidence to demonstrate that the Council reassessed its position by balancing the public benefits of the proposal against the heritage harm in light of its revised position and with reference to Paragraph 202 of the National Planning Policy Framework. This constitutes unreasonable behaviour on the part of the Council.
5. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicant. Had the Council carried out a further balancing exercise but maintained its objection to the scheme, the applicant would still have incurred expense by taking the time to review the Council's comments and submitting a rebuttal. Therefore, I

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

am not satisfied that the Council's unreasonable behaviour in respect of this matter has incurred the applicant unnecessary or wasted expense.

6. The applicant suggests that withdrawing two significant refusal reasons is effectively an admission that the Council was wrong to have refused the application on those grounds. It is however clear that the Council's change in position was based solely on the position established by the two more recently determined proposals. Both are very close to the appeal site and relate to similar material considerations in relation to the principle of development. As a result, it was necessary for the Council to revise its position, but this does not mean that its original position in respect of character and appearance and location was not sufficiently reasoned at the time it made its decision.
7. The applicant further submits that it received a late explanation of the Council's position, which was only made in the Council's statement of case, as the application was refused contrary to officer recommendation. This is however a common occurrence and is built into the appeal process as the applicant was given an opportunity to make final comments following a review of the Council's statement.
8. In summary, I am not satisfied that the limited unreasonable behaviour I have identified on the part of the Council has resulted in unnecessary or wasted expense to the applicant. The application for an award of costs should therefore be refused.

A Tucker

INSPECTOR