The Planning Inspectorate

Costs Decision

Site visit made on 13 July 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2023

Costs application in relation to Appeal Ref: APP/J2210/D/22/3312451
118 Clare Road, Whitstable, Kent CT5 2EH

- 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 Cockerton for a full award of costs against Canterbury City Council.
- The appeal was against the refusal of planning permission under section 73A of the Town and Country Planning Act 1990 for the variation of condition 2 of planning permission CA/21/00522.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.

3. The applicant considers the Council behaved unreasonably through the Councillors of the Planning Committee having a pre-determined view of the development.

4. Based on the evidence, the decision makers were informed by the Officer's Report which adequately presented the facts of the case for their consideration. While discussion of scale, bulk and character may have been limited, the applicant nonetheless accepts that they were terms referred to within the Committee meeting. The resultant reason for refusal adequately substantiates the Committee's concerns, and makes reference to specific issues and references local and national policy. As such I consider the reason for refusal to be adequate for its purpose.

5. While the Committee members may have been aware of the earlier withdrawn Enforcement Notice, I see no reason why this should not have been the case. I do not consider that the use of a similar wording within the reason for refusal as on that withdrawn notice necessarily demonstrates that the decision makers were pre-determined. Indeed the Committee members were entitled to reach a view that was consistent with the earlier wording of the notice. PPG states that a member should not be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view. There is not substantive evidence to demonstrate that actions more than this occurred in respect of the decision on the appeal scheme.

6. The applicant considers an application of this scale should normally have been determined under delegated powers, however this would not necessarily be the case. The ability for an application to be called to the Planning Committee for its determination is a part of the Council's decision making procedures, which does not in itself suggest pre-determination.

7. I appreciate that the Committee's decision would have been disappointing for the applicant, and the process was frustrating to observe. The alleged name-calling by members of the Committee is certainly not in the spirit of national policy, which states that local planning authorities should approach decisions on proposed development in a positive and creative way. However, this is matter for the Council's protocols and complaints procedures.

8. I appreciate that the type of planning application made, under Section 73 of the Act, was discussed with the Council prior to its validation. However, based on the evidence provided, this was the advice of an Officer given in good will, and it was ultimately the decision of the applicant which type of application was made.

Conclusion

9. For the reasons given, I do not find that there is substantive evidence that unreasonable behaviour occurred. As such, unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has not been demonstrated. Therefore, the application for costs is refused.

C Shearing

INSPECTOR