



Costs Decision

Site visit made on 27 July 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2023

**Costs application in relation to Appeal Ref: APP/E2205/W/22/3305234
Land south west of Viaduct Terrace, Warehorne Road, Hamstreet, Ashford
TN26 2DY**

- 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 Dr A Matthews for a full award of costs against Ashford Borough Council.
 - The appeal was against the refusal of planning permission for erection of 4no. semi-detached and 2no. detached dwellings along with a block of 6 apartments with associated parking.
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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 raises extensive concerns which, for clarity, I have summarised as: the consideration of the application by officers, the legal agreement, and the determination by the Planning Committee. For the avoidance of doubt, many of the allegations are best raised with the Council through their complaints procedure. While I appreciate the applicant has already engaged with that process, my consideration of this application for costs is nonetheless limited to the considerations above as set out in the PPG.

Consideration by Officers

4. It is alleged that the consultation period took far longer than expected. While the Council have not responded to this point, it is not uncommon that a consultation period would become elongated in order to ensure that all relevant parties have been afforded the ability to comment. Indeed, the applicant comments that his architect and agent were in constant communication with the case officer regarding the consultation process.
5. There would appear to have been multiple changes in the officers dealing with the application, arising in part from extended leave of staff. It is not my place to comment on the leave of officers, their level of competency as individuals or the Council's management of its staff. However, where officers communicated for example, that this could be a delegated decision made within certain timescales, I do not consider these were lies with harmful intent as suggested, nor that this amounted to unreasonable behaviour. While the changes to the

timescales would have been frustrating to the applicant and cast doubt over the timescale for a decision, such changes in circumstances can be an inherent part of the Council's decision making process. While not to the applicant's satisfaction, the evidence would suggest that there was communication from the Council regarding the potential timescales to which they were working. Matters relating to the alleged failure to respond to other correspondence during the course of the application are a matter for the Council.

6. However, even if these complaints had not arisen, the application may still have been refused by the Committee in any event. As such, it is unlikely that the need for an appeal would have been avoided. As a consequence, I find that these matters did not directly lead the applicant to incur unnecessary or wasted expense in the appeal process.

Legal Agreement

7. Concerns are raised that officers failed to take steps to ensure that a Section 106 agreement was completed in collaboration with its legal department. The Council have not provided comments on their processes for dealing with the creation of legal agreements and a lack of communication and transparency clearly occurred between the main parties on this matter, causing delay in the drafting of the agreement.
8. Despite this, the Council's Committee report makes clear that a legal agreement could be completed after the Committee's resolution, and the report makes references to the items which should be secured in the agreement if the application was otherwise found to be acceptable. The Committee minutes and transcript show that Members were advised of the applicant's willingness to negotiate the affordable housing provision. As such, I do not consider that the failure to create a legal agreement before the Committee meeting prejudiced the outcome of the application.
9. Neither do I consider that it was the sole responsibility of officers to ensure that the legal agreement was complete, either as part of the application or the appeal. There is not evidence before me to suggest that other options were not available to the appellant, for example through a unilateral undertaking, which could have secured the contributions based on the consultation responses and policy documents. Taking the above reasons together, I do not find that these events gave rise to unnecessary or wasted expense in the appeal process.

Determination by the Committee

10. The application had been recommended for approval by officers and refused by the Planning Committee. The Committee were not bound to accept the officer's recommendation and were entitled to challenge their officers and reach their own view on the proposal. As specialists advising the Committee, I do not find it was unreasonable for officers to subsequently advise their Members when constructing a reason for refusal to encompass their concerns. The resulting reasons for refusal in this instance make appropriate reference to the issues of concern and include reference to relevant development plan policies. While the applicant considers them vague, they were subsequently substantiated by the Council's comments on the appeal, and I consider the reasons for refusal were fit for purpose.

11. There is not substantive evidence before me that conflicts of interest existed on the Committee, and the transcript of the meeting shows members were given the opportunity for such declarations. While inaccuracies may have occurred in the discussions by Councillors, for example relating to passing goods trains, these matters did not ultimately provide reason for the application being refused. Other examples given by the applicant relate to matters of judgement. Based on the officer's report I am satisfied that Members were aware of the relevant policies and facts of the case.
12. The applicant expresses concern that the application was refused by the Committee as a result of his earlier complaints to the department, which are referenced in part in the meeting's transcript. This is however, conjecture, and not supported by strong evidence.

Conclusion

13. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Shearing

INSPECTOR