



Costs Decision

Site visit made on 5 September 2023

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Costs application in relation to Appeal Ref: APP/U2235/W/23/3317048 School House, Ashford Road, Harrietsham, Kent, ME17 1AJ

- 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 Michael Montila and Mr Antony Lee for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for the erection of three dwellings.
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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 application is seeking to recover the full costs incurred in the appeal process. The applicants are concerned that the Council: considered the incorrect plans; did not have proper regard to the planning history; introduced terminology in a reason for refusal which was not referred to in a previous scheme; mischaracterised the area to justify its decision; and did not refer to the plans on the decision notice. In the final comments, the applicants raise further concerns about the continued references to heritage assets and trees in the Council's appeal statement, even though it had not found harm in these respects.
4. I note that the applicants submitted amended plans and that the Council's Planning Officer had agreed to write the report on the basis of these, proceeding with refusal of the scheme. The Council's appeal statement accepts that, in error, the plans were not logged onto its system and the committee report (the report) proceeded on the basis of the original plans. However, regardless of the status of the amended plans, the Council referred to them in the report and it is clear from this and the Council's appeal statement that the amended scheme would not have overcome the issues which led to its refusal. Therefore, the costs of an appeal would not have been avoided.
5. The applicants assert that the Committee was presented with incorrect information in relation to the planning history of the site. The report refers to previous permissions for six units relating to the site and the adjoining site to the west (planning application refs MA/08/1767 and 12/2140). There is limited evidence that the Committee was misled in this respect or did not have regard

to the history in making its decision which would have led it to come to a different decision.

6. The first reason for refusal refers to the building line which was a change from that outlined in the report. In my view, Council Members were entitled not to accept the professional advice of Officers and put forward a different reason for refusal so long as a case could be made. The Council's appeal statement makes the case for including the building line in the reason for refusal. As can be seen from my appeal decision, I have agreed with the Council's assessment and have dismissed the appeal, concluding that this reason given by the Council could be substantiated.
7. I note that the reasons for refusal of a previous application for four dwellings on the site (planning application ref 21/504801/FULL) did not specifically refer to the building line but did refer to siting. Therefore, the Council has not been inconsistent in its approach.
8. The applicants consider that the report does not correctly refer to the form of adjacent development and, had the Council's committee been more informed of the character of the area, it would have found the scheme acceptable. The report refers to a bungalow being located towards the front of the site and a two-storey property located to the rear, and it also includes a plan which shows the site and surrounding buildings. Therefore, I do not agree that the Council was misled in this regard.
9. Neither the report nor the Council's decision notice list the plans on which the decision was made. Whilst doing so would provide greater clarity, I have not been referred to any legal requirement for the Council to do this. Furthermore, it is clear from the report that the Council was considering the application on the basis of the originally submitted plans and not the revised ones.
10. The Council's appeal statement includes sections on heritage impacts and trees and landscaping which appear to repeat text from the report, and further references to the non-designated heritage asset in response to the applicants' grounds of appeal. Whilst these were not included in the reasons for refusing the application, there is no evidence that the applicants carried out any further work or studies in response to the Council's statement nor that any additional costs were incurred.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Wright

INSPECTOR