



Costs Decision

Site visit made on 11 July 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Costs application in relation to Appeal Ref: APP/H2265/W/22/3302608 2 Yardley Park Road, Tonbridge TN9 1NE

- 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 9 The Spinney Ltd for a full award of costs against Tonbridge and Malling Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing buildings and the erection of 13no. apartments with associated access, landscaping, parking and infrastructure.
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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. 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 planning applications, or by unreasonably defending appeals.
3. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; and where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant seeks a full award of costs on the basis that refusal of the application by the Planning Committee was made on unsubstantiated grounds contrary to the professional advice provided by the Planning Officer and statutory consultees at the application stage. The applicant contends that the Council's decision was based on vague, generalised or inaccurate assertions about the proposal's impact, which are unsubstantiated and unsupported by any objective analysis. In so doing, the Council's behaviour was unreasonable and has prevented or delayed development which should clearly have been permitted.
5. The appellant has provided a link to the video recording of the Planning Committee Meeting, however, Paragraph 9.4.7.1. of the 'Procedural Guide:

Planning appeals – England’, states that audio or video evidence will not be accepted and that a written summary should be provided. Therefore, I have not viewed the recording of the Planning Committee meeting and my decision on this application for costs is based on the written evidence before me. Concerns over the behaviour and conduct of Planning Committee Members during the meeting are matters to be taken up with the Council.

6. It is acknowledged that the Planning Committee is not required to accept the advice of its professional officers and is entitled to exercise its own planning judgement and reach a different conclusion. However, if a different conclusion is reached, the Council has to demonstrate, on planning grounds, why a proposal is unacceptable and provide clear evidence substantiating that reasoning.
7. Matters relating to the effect of a proposal on the significance of a designated heritage asset, and the character and appearance of an area, and effects on living conditions are broadly subjective matters, involving planning judgement. The applicant has referred to the Council’s decision as being made against the advice of statutory consultees. However, the applicant has not specified which statutory consultees the Council disagreed with in reaching its decision.
8. In reaching its decision and aided by the evidence before it, including the Committee Report, the Committee referred to the relevant development plan policies, and it clearly recognised the location of the appeal site as within the Conservation Area, and the sizes and styles of the existing buildings in the locality of the appeal site. The Council’s statement provides an explanation of the scale of the proposed building relative to the existing dwelling on the site and others in the locality, including a recognition of the prominence of the appeal site in public views and its siting relative to the road. The scale of the proposal would have been clear from the drawings.
9. Although the Council’s finding of ‘poor design’ is dealt with in relatively broad terms in its statement, scale is an aspect of design, and the Council has explained why the scale, bulk and massing of the proposal would, in its view, have caused harm to the significance of the Conservation Area and to the character and appearance of the area. Despite disagreeing with the Council in my main decision on the appeal, there is nothing inherently unreasonable with the Council’s assessment of these matters, and it has adequately substantiated the relevant reasons for refusal.
10. The Council’s concerns over the effects of the proposal on the living conditions of the nearby occupiers of Springhill Cottage are adequately substantiated with reference to an objective analysis of the existing conditions at that property. This includes any analysis of the outlook from this property with respect to its window openings and its relative to the scale and position of the proposed building, and the increased levels of activity at the proposed development. Therefore, the Council’s assessment of this matter and its finding of harm was not unreasonable and it has adequately substantiated this reason for refusal.
11. The balancing exercise is a matter of planning judgement. The Committee clearly recognised the need to balance the benefits against the harms, with particular regard to Paragraph 11.d) of the National Planning Policy Framework as referenced in the refusal reason and taking account of its conclusion on the proposal’s effect on the designated heritage asset. The Committee were assisted by the Committee report setting out the benefits of the scheme and

the Council's housing land supply position. Although expressed in relatively brief terms in the Council's refusal reason and statement, the outcome of the balance was nonetheless substantiated with specific reference to the harms identified by the Council. Accordingly, the Council's assessment of this matter was not unreasonable.

12. I acknowledge that I have reached different conclusions in my main decision to those reached by the Council. However, I am satisfied on the evidence before me that the Council adequately substantiated its refusal reasons through a sufficiently detailed and objective analysis of the proposal's impacts, and why it would not be acceptable, having regard to relevant development plan policies. It has exercised reasonable planning judgement when balancing the relevant benefits and disbenefits of the proposal, and it did not prevent or delay development which should clearly have been permitted. Consequently, I find that the applicant has not incurred unnecessary or wasted expense in the appeal process.

Conclusion

13. I am satisfied that the Council's Planning Committee did not behave unreasonably in reaching its own conclusions on the planning application. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

G Sylvester

INSPECTOR