



Costs Decision

Site visit made on 23 January 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16.02.2024

Costs application in relation to Appeal Ref: APP/G2245/W/23/3318386 Summerhill, Seal Hollow Road, Sevenoaks, Kent TN13 3SH

- 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 Brentfield Homes Limited for a full award of costs against Sevenoaks District Council.
 - The appeal was against the grant subject to conditions of planning permission for demolition of existing dwelling; erection of two detached dwellings with garaging and associated works incorporating minor revisions following consents under application references SE/18/00158/OUT and SE/18/02903/CONVAR by varying conditions 2, 3, 6, 8, 9, 10, 11 and 12 attached to planning permission Ref 20/01075/FUL.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and that behaviour has directly 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 applicant considers that the Council behaved unreasonably as it: imposed conditions that do not comply with the guidance in the National Planning Policy Framework on planning conditions; put forward vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis; and did not determine cases in a consistent manner.
4. Planning permission was originally granted (application ref 20/01075/FUL) for the demolition of a dwelling and the erection of two dwellings. A subsequent planning application (application ref 22/03345/MMA)¹ gained approval for minor amendments to the approved scheme, involving the addition of a single storey side extension in place of the proposed single bay attached garage.
5. The current planning application does not include a plan showing a turning area and I have found it unlikely that a turning area would not be retained. Therefore, condition 14 requiring the turning area to be kept free is not necessary, enforceable, or precise. As such, the imposition of such a condition is not necessary or reasonable.

¹ The 'current planning application/permission'

6. The current planning permission includes landscaping conditions which require the implementation of landscaping and its replacement with similar size and species if it fails within five years of the development being completed. There are references to a plan which shows the thuja brabant planting along the eastern boundary. The Council's Planning Officer's report states that the proposed amendment even if the eastern boundary hedgerow is deteriorating would not alter the extent of light loss or privacy loss for the occupiers of Levenhurst and Dawning House. I have also found that the proposal would not harm the living conditions of the occupiers of these neighbouring properties. Consequently, the condition requiring the maintenance of the boundary hedge and its replacement in the event of damage or loss during development is also not necessary or reasonable.
7. The Council's planning officer's report addresses the impacts of the proposal, and its appeal statement indicates that the conditions were in response to plans submitted for building control consent and concerns raised regarding damage to the boundary. Although other proposals for the site did not include the requirements outlined in conditions 14 and 15, the Council states that the planning application was determined in accordance with its constitution and that it is authorised to include additional conditions within a Section 73 application. Therefore, even though I have found that the conditions are not necessary or reasonable, the Council substantiated its reasons for imposing them.
8. The Council accepts that it made errors in the drawing numbers listed in the conditions, has apologised, and has offered a free non-material amendment application.
9. Therefore, I conclude that by imposing conditions that were not necessary or reasonable, the Council's behaviour has been unreasonable. It thus follows that the applicant has incurred unnecessary expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Sevenoaks District Council shall pay to Brentfield Homes Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Sevenoaks District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Wright

INSPECTOR