



## Costs Decision

Site visit made on 12 March 2024

**by A Price BSc MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2 April 2024**

**Costs application in relation to Appeal Ref: APP/A2280/W/23/3329590**

**Land rear of 9-15 Railway Street, Gillingham, Medway ME7 1XF**

- 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 D Konuralp of Siltons Ltd for a full award of costs against Medway Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the construction of a pair of semi-detached mews houses (demolition of existing double garage).

### Decision

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

### 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 sets out several procedural and substantive matters that have led to this costs application. These include, in summary: a failure to adhere to deadlines; failing to produce evidence to substantiate each reason for refusal and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and not determining similar cases in a consistent manner.
4. The PPG sets out that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
5. The Council's putative reasons for refusal have been provided in its appeal statement. These, in my view, have been adequately substantiated and clearly state the policies of the development plan which the appeal proposal is considered to conflict with. However, the Council did not, and has not, clearly set out why the decision was not made on time, or why the applicant was not given the opportunity to formally extend the application period. Only after the determination date was this offered.
6. The applicant seems to have been under the impression that there were no significant outstanding issues with their proposal until very late in the process, beyond the determination period. Had there been better communication with

the applicant during the course of the application, it is conceivable that the matters of disagreement could have been resolved which would have enabled the appeal to be avoided altogether. In this respect, I consider the Council to have acted unreasonably.

7. In respect of similar cases, I have only limited information before me. Nevertheless, the Council's objection in respect of parking relates to the loss of the existing car park and not the proposed car-free nature of the development of two dwellings. In respect of a previous decision on the site, the appeal scheme formed a new planning application and consisted of elements which, although not dissimilar, were not identical to the earlier scheme. That earlier scheme was, in any event, refused. I have no substantive evidence before me to conclude that the Council acted unreasonably in this respect.

### **Conclusion**

8. Overall, for the reasons given above, the Council has behaved unreasonably, and this unreasonable behaviour has directly caused the applicant to incur unnecessary or wasted expense through the preparation and submission of the appeal.

### **Costs Order**

9. 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 Medway Council shall pay to Mr D Konuralp of Siltons Ltd, 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.

The applicant is now invited to submit to the 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 Price*

INSPECTOR