



Costs Decision

Site visit made on 23 January 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

**Costs application in relation to Appeal Ref: APP/H2265/W/23/3325169
1 Silverhill Cottages, Dunks Green Road, Dunks Green, Tonbridge, Kent
TN11 9RU**

- 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 and Mrs P and M Smart for a full award of costs against Tonbridge and Malling Borough Council.
 - The appeal was against the refusal of planning permission for a *proposed infill extension*.
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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 application is made on the assertion that the Council (i) made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; (ii) prevented or delayed development which should have been clearly permitted and (iii) not determined cases in a consistent matter. I will consider each point in turn.
4. In relation to point (i), the parties agree that, when application TM/23/00365/FL (the appeal case) was first submitted, not all of the submitted documents were uploaded to the electronic file. As a result, the full extent of the circumstances surrounding the site and the neighbouring property had not been apparent to the case officer determining the application. Nevertheless, the officer report provides an objective analysis of the proposal based on the information that the case officer had before them. On this basis, the Council has not made vague or generalised assertions regarding the proposal.
5. With regards to points (ii) and (iii), the Council recognises that it has failed to have regard to the planning history of the adjacent site when assessing application TM/23/00365/FL. In doing so, and then proceeding to approve another planning application for substantially the same proposal, the Council prevented or delayed development that should have clearly been permitted and failed to determine both cases in a consistent manner.
6. Albeit the Council attempted to address the situation by liaising with the applicant, the applicant states that communication was slow, which is not

disputed by the Council. As a result, the applicant submitted an appeal to safeguard their position, given the statutory time to lodge the appeal.

7. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

8. 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 Tonbridge and Malling Borough Council shall pay to Mr and Mrs P and M Smart, 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 Tonbridge and Malling Borough 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.

P Terceiro

INSPECTOR