



Costs Decision

Hearing held on 14 May 2024

Site visit made on 14 May 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Costs application in relation to Appeal A Ref: APP/A2280/C/21/3280974 Flat Block at the rear of Ingram Court, 89 Ingram Road, Gillingham, Kent, ME7 1SH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Medway Council for a partial award of costs against Windmill Construction Limited.
 - The appeal was against an enforcement notice alleging the construction of a block of 9 flats and external refuse storage areas.
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Appeal B Ref: APP/A2280/W/21/3280975 89 Ingram Road, Gillingham, ME7 1SH

- 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 Medway Council for a partial award of costs against Windmill Construction Ltd.
 - The appeal was against the refusal of planning permission for Internal alterations to Block A (front block) to provide 2 n parking spaces. Internal alterations to rear bloc to provide additional 4 no apartments within built volume. Construction of apartment referred to as Block B (application MC/19/2588). External cycle and refuse store.
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Decision

1. The application for an award of costs in Appeals A and B is refused.

The submissions for the Council

2. The costs application was submitted in writing. The application is for a partial award arising from the submission of Stantec's third report (TN0003) on 8 May 2024 with the redetermination hearing taking place on 14 May. The Council is seeking a partial award of costs in relation of section three of TN0003 only. This refers to five other planning permissions granted by Medway Council with lower on-site parking provision than the appeal development. The Council say that the late provision of this information necessitated extra expense in that they had to respond to these additional material considerations in writing after the hearing.

The response by Windmill Construction Limited

3. The response was made in writing, and states that this was not new material as the Council should be aware of their own planning decisions which are a material consideration, and take these into account to ensure consistency in decision-making.

Reasons

4. 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.
5. Whilst this information was provided late in the day it was a material consideration in the redetermination. I understand that the Council issues many planning decisions but those highlighted were all fairly recent decisions and of a similar nature to the appeal development. The Council would have been able to easily access and review the relevant files once specifically highlighted by the Appellant.
6. It is right that each decision is site specific and that the Council needed to have the opportunity to properly comment on these decisions, and as it was not possible to do so before the hearing provision was made to allow this to happen in writing after the hearing. However, I do not accept that this resulted in the Council incurring wasted expense as these were material considerations which were rightly assessed as part of the appeals.
7. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Zoë Franks

INSPECTOR