



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 Windmill Construction Ltd for a full award of costs against Medway Council.
 - The appeal was against an enforcement notice alleging the construction of a block of 9 flats and external refuse storage areas.
-

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 Windmill Construction Ltd for a full award of costs against Medway Council.
 - The appeal was against the refusal of planning permission for construction of 9 apartments referred to as Block B, external cycle and refuse store.
-

Decision

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

The submissions for Windmill Construction Limited

2. The costs application was submitted in writing and included procedural and substantive grounds. The applicant argues that the development which should clearly be permitted has been prevented or delayed; that vague, generalised or inaccurate assertions were unsupported by any objective analysis; that the Council has not determined similar cases in an objective manner; and that there has been resistance to/lack of cooperation by the Council.
3. They say that the Council's refusal of permission and subsequent issue of the enforcement notice were unreasonable causing unnecessary expense to the applicant in terms of both the first and second hearings and determinations, and as such that a full award of costs in the appeal including both hearings should be awarded. Failing that, they argue that the Council should have withdrawn its objections following the receipt of Stantec's second report based on the 2021 Census figures (29 November 2023).

The response by the Council

4. The response was made in writing. The Council argue that their approach was reasonable and supported by its guidance documents and professional expert judgement.

Reasons

5. 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.
6. The appeals were successful but this does not in itself mean that the Council behaved unreasonably. Whilst I found that the development should be granted permission this was a planning judgement based on the specific facts and considerations relating to the development and site context. The Council's transport expert evidence differed from that of the Applicant's but both parties clearly explained their reasoning (including in analysis of other sites granted a lower parking provision), and indeed agreed on various issues as appropriate. The Council were therefore entitled to rely on their transport expert, including in relation to the updated Census Data, and maintain their objections.
7. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Zoë Frank

INSPECTOR