



Costs Decision

Site visit made on 17 October 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Costs application in relation to Appeal Ref: APP/H2265/W/24/3338610 Otford Tool & Gauge Co, Maidstone Road, Platt, Kent, TN15 8JE

- 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 OTG Precision Engineering Ltd for a full award of costs against Tonbridge and Malling Borough 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 redevelopment of the site to provide 9no. new residential dwellings with associated hard and soft landscaping.
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Decision

1. The application for an award of costs is refused.

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 failed to determine the application within the time limits without giving the applicant a proper explanation. This led to the need for the applicant to appeal against the failure of the Council to issue a decision.
4. The Council was required to determine the planning application by 15 August 2023. In response to an email from the applicant and in advance of the determination date, on 11 August 2023 the Council's planning officer responded that it had concerns about the proximity of some dwellings to an adjacent tree and was awaiting detailed comments from its landscape officer. Although the Council did not provide the applicant with any precise reasons for potential refusal at the application stage, the issue that the Council has with the proposal was evident from August 2023. This subsequently formed the basis of the Council's statement of case on appeal.
5. The Council had previously approved applications to carry out works to the protected trees but allegations about the extent of the works undertaken were brought to the Council's attention in August and October 2023. The Council inspected the site on 18 October 2023 when evidence was found indicating that the tree works had not been carried out in accordance with the permissions.

6. Following several emails from the applicant, on 14 November 2023, the Council's planning officer responded that the delay had arisen due to an ongoing enforcement investigation being carried out regarding the works to the adjacent protected tree. This investigation is not yet complete and is relevant as the proximity of the protected trees to proposed gardens and the impact of the proposal on the trees are key issues in respect of the scheme. As can be seen from my appeal decision, I have agreed with the Council and dismissed the appeal.
7. In view of all the above points, I do not consider that the Council's behaviour has been unreasonable. It thus follows that the applicant has not incurred any unnecessary expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Wright

INSPECTOR