

Costs Decision

Site visit made on 3 October 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

**Costs application in relation to Appeal Ref: APP/K2230/W/23/3336161
Land rear of Hilary Cottage, Hermitage Road, Higham, Rochester,
Kent ME3 7NE**

- 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 P Rutherford for a partial award of costs against Gravesham Borough Council.
 - The appeal was against the refusal of planning permission for removal of 2 No. containers and hard surfacing and conversion of livery stable into 2 No. residential units plus associated gardens and parking.
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Decision

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

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. The application is made on a number of substantive grounds in relation to the highways reason for refusal.
3. The applicant considers that the Council has not determined similar cases in a consistent manner with respect to highway safety and has not produced evidence to substantiate the reason for refusal. It is also put forward that a material consideration, namely the existing use of the site, has not been taken into account. I have been provided with information from previous applications¹ on the site, including the officer reports for three previous applications. These do not all contain full details of the comments of the Council's highways officer, but there is no reference to a lack of passing bays along the access as a concern from either the planning or highways officers, subject to commercial activity ceasing on the site. There is no explanation within the officer report or any of the appeal documentation as to why a different view on the need for passing bays is now being taken. There is also no acknowledgement of the effect of the lawful use of the site, which formed part of the highway officer's rationale to accept the use of access in a previous proposal.
4. The Council refers to the Kent County Council Kent Design Guide in its response to the application for costs. However, this document is not referenced in the highway officer comments, officer report or appeal statement – a fact the Council acknowledge in their response. It was not provided as part of the

¹ 20160888; 20171104 and 20220477

- appeal documentation. Full information as to the status of this document, or indeed a copy of the full document has not been provided. In this respect, the Council has behaved unreasonably in not only failing to determine similar cases in a similar manner, but in seeking to introduce new evidence at a late stage.
5. However, this was not the only aspect of the reason for refusal in relation to parking and access at the site. Nor were these concerns the only reason for refusal. No additional substantive highways evidence was placed before me seeking to address this issue. The appellant has therefore not incurred any additional or wasted expense in challenging this aspect of the proposal.
 6. The previous reports before me indicated that there were concerns regarding visitor parking and turning space raised in the previous proposals. While these did not form reasons for refusal, it was within the applicant's power to address these issues as part of their revised proposals. The Council's concerns in this respect were well set out and demonstrated a reasonable exercise of planning judgement. In this respect, the Council has not behaved unreasonably.
 7. The previous appeal decision² did not have highway safety as a main issue. Nor at any point does that decision specifically state that the highways effects of that development would be acceptable. As the appeal was dismissed, it cannot be inferred that the Inspector considered the proposal to be acceptable in relation to highways matters. It therefore has not been demonstrated that the Council behaved unreasonably by persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
 8. The appellant also considers that the Council has failed to consider the use of a condition that would enable the proposed development to go ahead. The potential for there to be conflict with the access to the field gate from the proposed layout was a legitimate consideration to be taken into account. While the Council's officer report does not explicitly say this could be addressed by condition, it is not specifically referenced in the reason for refusal. This therefore did not constitute unreasonable behaviour on the part of the Council. Suggested conditions are provided on a without prejudice basis as part of the appeal process. The inclusion of a condition by the Council would not justify an award of costs in this case.

Conclusion

9. I therefore find that while there has been some unreasonable behaviour by the Council, it has not resulted in unnecessary or wasted expense as described in the Planning Practice Guidance. An award of costs is therefore not warranted.

J Downs

INSPECTOR

² APP/K2230/W/18/3208174 dismissed 13 December 2018