



Costs Decision

Site visit made on 21 January 2025

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2025

Costs application in relation to Appeal Ref: APP/U2235/W/24/3348265

The Cold Store, Cannon Farm Thorn Road, Marden, TONBRIDGE, TN12 9LR

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 C Martin for a full award of costs against Maidstone Borough Council.

The appeal was against the refusal of planning permission for the change of use of former agricultural building to a single dwellinghouse, with associated curtilage area and parking provision along with external alterations.

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 for costs is made on the basis of the following:
 - A) The refusal by the Council to enter into discussions with the appellant;
 - B) The lack of co-operation by the Council to make publicly available additional evidence provided by the appellant following objections raised by the Parish Council in a timely manner;
 - C) The Council's failure to detail within their Delegated Report that the Parish Council withdrew their objection in their meeting one week before the decision was issued; and;
 - D) Acting against case law in relation to realistic 'fall-back positions' constituting a material planning consideration, despite recognition of this as part of the consideration of other planning applications in the local area.
4. Whilst behaviour and actions at the time of the planning application can be taken into account, it has not been demonstrated how failing to enter into discussions during the application process has resulted in unnecessary or wasted expense in the appeal process. Furthermore, it is not a mandatory requirement for a Council to enter into discussions with an applicant during the determination period. Therefore, the failure to discuss the application with the appellant would not amount to unreasonable behaviour.

5. Whilst there was delay in publishing the evidence provided by the appellant to address the concerns of the Parish Council, the Parish were still able to consider the representations made. The applicant claims that the updated Parish Council representation was not taken into account, but the officers report clearly sets out that in principle councillors had no objection to the application. Whilst concerns were raised, the response from the Parish was not considered as an objection and it would not have been determinative in the Council's recommendation. This delay, whilst frustrating, would not have resulted in unnecessary or wasted expense in the appeal process.
6. The failure of the Council to give weight to the fallback position has resulted in the appellant having to address in principle matters during the appeal which have already been established. Reasons for refusal (1) and (4) are in principle objections which are addressed by the fallback position. It was unreasonable for the Council to require the appellant to demonstrate an alternative commercial use for the building when it already has permission to be converted into two dwellings. Equally, refusal on the basis of the proposed dwelling being far removed from basic services and facilities, is unreasonable when the fallback position provides more accommodation in the same location.
7. Given the external alterations proposed, reasons for refusal (2) and (3) are reasonable as the proposed additions to the building change its appearance, and the related policies are relevant in this respect. Whilst I have considered the design of the building in terms of the increased glazing and building height to be acceptable, the Councils' stance in this respect was justified.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of defending reasons for refusal (1) and (4) and a partial award of costs is therefore warranted.

Costs Order

9. 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 Maidstone Borough Council shall pay to Mr and Mrs Chris Martin, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending reasons for refusal (1) and (4) ; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Maidstone 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.

V. Goldberg

INSPECTOR