



---

## Costs Decision

Site visit made on 14 May 2018

**by AJ Steen BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 June 2018**

---

### **Costs application in relation to Appeal Ref: APP/X2220/W/18/3196016 Land between 107 and 127 Capel Street, Capel-le-Ferne, Folkestone CT18 7HB**

- 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 Odlin for a full award of costs against Dover District Council.
  - The appeal was against the refusal of planning permission for 10 flats in 2 no. blocks (6x1 bed and 4x2 bed); and 31 houses (10x2 bed, 15x3 bed and 6x4 bed); plus associated access and parking.
- 

### **Decision**

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

### **Reasons**

2. 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. It is not unusual for Councillors, at times, to come to a different conclusion from that of their professional advisors on the evidence before them. That, in itself, is not unreasonable.
3. In this case, the Council's Planning Committee agreed that the application should be refused and reasons for that were set out in the minutes of the meeting that have been provided by the Council, albeit the precise wording of the reasons for refusal were not agreed at that stage. It may have been preferable for the reason for refusal be agreed at the meeting to ensure consistency with the resolution of the committee. However, the reason for refusal in this case is broadly consistent with that resolution and, even if unreasonable, would not have resulted in unnecessary or wasted expense in the appeal process.
4. I have been referred to a number of Judicial decisions. In the case of *Oakley v South Cambridge District Council [2017] EWCA Civ 71* I understand that there was no record of reasons for the member's decision and none were given orally at committee. That differs from the present case where reasons were given, albeit the precise wording was delegated to Officers in consultation with the Chairman and Vice-Chairman of the Committee. Similarly, *R (oao CPRE Kent) v Dover District Council [2016] EWCA Civ 936* related to a case where a collective and collaborative reasoning to the merits of the case was not given,

but that differs from this case where the resolution was given and was clear, albeit the precise wording of the reasons for refusal was determined later.

5. The reference to *R (oao Shasha) v Westminster City Council [2016] EWHC 3282 (Admin)* concerns where a Council failed to follow the development plan policy. In this case, it was for the Council to determine whether the layout and access details would comply with relevant development plan policies. I do not agree with the appellant that the Council have not followed their development plan. The main issues relate to the effect of the development on the character and appearance of the area and the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty. These matters are, by their very nature, subjective. Whilst I do not wholly agree with the Council, I do not consider their decision was unreasonable.
6. *South Bucks District Council v Porter (No. 2) [2004] 1 WLR 1953* concerns whether the decision was adequate and intelligible. I consider that the reason given for the refusal, both in terms of the resolution of the committee and that on the decision notice, was clear.
7. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs must fail.

*AJ Steen*

INSPECTOR