
Costs Decision

Hearing held on 15 September 2016

Site visit made on 14 September 2016

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Costs application in relation to Appeal Ref: APP/C3810/W/16/3147195 Land south of The Littlehampton Academy, Littlehampton, West Sussex, BN17 6DQ

- 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 West Sussex County Council for a full award of costs against Arun District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for 'outline application for 68 residential units'.
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Decision

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

Preliminary Matter

2. The application for costs was made by the applicant on 26 August 2016 in writing. The local planning authority (LPA) had an opportunity to respond to the application and a response was made in writing before the Hearing. At the Hearing, both parties had an opportunity to make further observations on the application, and I have taken into account the comments made by both parties in coming to my decision.

The submissions for West Sussex County Council

3. Put simply, the applicant considers that the LPA had unreasonably refused and failed to substantiate its reason for refusal. This is on the basis of disputes over when or whether meetings did or did not take place, overall discussions on viability, and the LPAs changing stance on the viability of the scheme, from an initial concern that it could have provided more affordable housing, to the position that the LPA was no longer contesting the appeal.

The response by Arun District Council

4. Put simply, the LPA do not consider they acted unreasonably. They partook in a number of meetings with the applicant. What is more, the appeal submission includes information which was not available to the LPA at the time of determination, for example an update to an appraisal. It is this new information, which was not available earlier, that the LPA have now taken into account and on this information they have decided not to contest the planning appeal.

Reasons

5. The national Planning Practice Guidance (the Guidance) advises the 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. In this case, some of the suggested unreasonable behaviour which may have occurred has done so prior to the LPA issuing its decision and therefore before the appeal process. The applicant pointed me to the Guidance in respect of taking into account the behaviour of the LPA during the application process. However, on this matter the Guidance indicates that the LPAs handling of the planning application may lead to an award of costs when the LPA fails to determine an application and fail to explain their reasons for not reaching a decision. This has not occurred in this case.
7. In terms of the legal agreement made under Section 106 of the TCPA 1990, this was not legally effective until it was signed on 18 August 2016. Whilst Heads of Terms were submitted at the application stage, the earliest sign of a signed and completed legal agreement to secure the obligations was in August 2016. None appears to have been submitted between the submission of the application in February 2015 to its refusal in September 2015. Nor was one submitted between the refusal in September 2015 and the submission of the appeal at the end of March 2016. Indeed, it was not until August 2016, less than a calendar month before the Hearing that the appellant submitted a unilateral undertaking – that is a legal agreement undertaken unilaterally, without the need to have multiple parties involved.
8. I heard from the appellant that they considered that the delay was caused by procrastination on the part of the LPA. Yet, I also heard that the applicant's position in terms of the contents of the legal agreement was relatively unchanged from the initial submission in February 2015 to the day of the Hearing. In which case, it could be reasonably suggested, that the applicant could have submitted a unilateral undertaking considerably earlier in the process. What is more, a number of the obligations are there to secure funding for libraries, education and other services that the County Council either provide or work closely with other public bodies such as the NHS and Fire and Rescue Service in a two-tier local authority area to provide. Some of these are also subject to formulas rather than specific amounts of financial contribution, as the scheme was made in outline, so it seems strange that they would act as an impediment to an earlier submission of a completed and legally effective unilateral undertaking.
9. I note that the applicant, whilst taking part in some discussions in its role as a potential developer and as the County Council, did not seek formal pre-application advice from the LPA as suggested by Paragraphs 188 to 195 of the National Planning Policy Framework (the Framework). Whilst not obligatory, it is clear that national policy strongly encourages pre-application engagement; and such a process undertaken here between the County and District Council may have resulted in improved outcomes for the community by providing housing on a Neighbourhood Plan allocated site earlier.
10. Nonetheless, it is clear that the LPA considered the proposed development against the development plan, and took into account material considerations, such as the Framework, in coming to its decision. This is in accordance with

the requirements of Section 38(6) of the *Planning and Compulsory Purchase Act 2004*. During the appeal process, the LPA did substantiate its reasons for refusal, following an objective analysis of its potential impact. If a completed legal agreement had been submitted earlier by the applicant, it may have been possible to resolve matters earlier. But this did not happen between the submission of the scheme in February 2015 and the signing of the legal agreement on 18 August 2016.

11. When taken as a whole, it appears as though there have been some minor failings in communication, or missed opportunities, on both sides to resolve matters much earlier. Nevertheless, I do not find that any such issues lead to the logical conclusion that the LPA acted unreasonably in dealing with the scheme in respect of the application for costs.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in this case. Accordingly, the application for costs is refused.

Cullum J A Parker

INSPECTOR