The Planning Inspectorate

Costs Decision

Site visit made on 13 December 2016

by David Walker MA MRTPI

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

Decision date: 12th January 2017

Costs application in relation to Appeal Ref: APP/W1145/W/16/3155870
Land at Golf Links Road, Westward Ho!, Bideford, Devon EX39 1GW

- 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 Westward Living Ltd for a full award of costs against Torridge District Council.
- The appeal was against the refusal of planning permission for development described as 'Hotel – Restaurant – Ground Floor Commercial – Spa' without complying with a condition attached to planning permission Ref 1/0995/2014/OUTM, dated 25 November 2015.

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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 claim is brought on the basis that the Council's handling of the application was unreasonable in that it had sufficient information before it to determine that condition No 4 of the original permission was no longer valid. Although the Council's handling of the pre-application process is also referred to, this is not a formal part of the planning application leading to the appeal.

4. The Council has maintained its position that there was a need to establish parameters on the height of the building in the outline permission. However, the restrictions imposed by the disputed condition were determined by an Inspector on appeal, and not by the Council. The matter was not challenged at the time of the appeal granting the original permission.

5. It will be apparent from my decision that I agree that there are problems with the condition. I have reached this assessment in the light of the previous Inspector's findings that a 4 or 5 storey building would be acceptable, and the subsequent evidence of technical difficulties in achieving the 5 storey option. It would seem illogical to preclude a suitable 5 storey building on this basis.

6. However, my view that the condition should be removed is predicated on there being some flexibility over the height of the building at the detailed design stage. This is based on an assessment of the characteristics of the appeal site and its setting rather than any acceptance of the illustrative design that was submitted with the appeal and to the Council previously. It is a planning

judgement over which the Council was entitled to maintain its position that height should be fixed; the additional storey being achieved by other means such as reducing ground levels. The appeal would therefore have been necessary in order to test the scope for flexibility over the height of the proposed building.

7. I therefore find that unreasonable behaviour in the manner described in the Planning Practice Guidance has not been demonstrated and accordingly neither a full nor a partial award of costs is warranted.

David Walker

INSPECTOR