

Costs Decision

Hearing held on 17 January 2017

Site visit made on 17 January 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 08 February 2017

Costs application in relation to Appeal A

Ref: APP/Q9495/W/16/3157405

Former Radio House, Church Street, Ambleside, LA22 0BT

- 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 M G Brindle for a partial award of costs against Lake District National Park Authority.
 - The hearing was in connection with an appeal against the refusal of planning permission for the partial demolition, extension and alterations to convert shop and flat into three apartments.
-

Costs application in relation to Appeal B

Ref: APP/Q9495/W/16/3164356

Former Radio House, Church Street, Ambleside, LA22 0BT

- 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 M G Brindle for a partial award of costs against Lake District National Park Authority.
 - The hearing was in connection with an appeal against the refusal of planning permission for the extension and alteration to convert shop and flat into three apartments.
-

Decision

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

The submissions for Mr G Brindle

2. The application was made orally at the Hearing. The applicant contends that the Authority acted unreasonably because it failed to provide evidence counter to the submitted viability appraisals to substantiate their reason for refusal and relied solely on an absolute application of its policy. This matter is relevant to both Appeal A and Appeal B.
 3. Secondly the applicant considers that in respect of the partial demolition, the Authority made vague and generalised assertions about the impact of partial demolition and were misconceived in terms of the correct policy that should be applied. This matter relates to Appeal A only.
 4. In terms of costs incurred in defending the reasons for refusal, the applicant considers that in relation to the demolition issue, this is not significant. However in relation to the viability appraisals the applicant has had to produce
-

and review these several times without any feedback. Furthermore the applicant argues that elements of these two issues could have been dealt with by condition. Therefore the Authority acted unreasonably.

The response by the Lake District National Park Authority

5. The response was made orally at the Hearing. The Authority believes they have acted reasonably in relation to both matters. They acknowledge that viability is a material consideration and argue that they have considered fully the information put forward and have not disputed the appraisals. The Authority consider that the viability of the proposals does not provide sufficient weight to outweigh the harm that could be caused to Policy CS 18 and the fact that it goes against the 2010 Circular. Neither of these documents allows unfettered housing in the National Park. The Authority have provided significant evidence of proven local need as highlighted in the SHMA and recent figures show that over 40% of housing in Ambleside is not permanently occupied.
6. With regard to demolition the Authority have acted reasonably as through the planning process the amount of demolition was not evidenced or clarified despite the Authority asking for this information.
7. The Authority fails to see how viability could be conditioned as suggested by the applicant.

Reasons

8. 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.
9. In terms of the first matter, that the Authority had failed to substantiate its reason for refusal with regard to the issue of scheme viability, relevant evidence was provided by the Authority to support their position. Statistics of second home ownership and the latest local housing needs survey in the 2014 SHMA were presented to demonstrate the significant need for local needs housing in the area. Reasons were given to show why the Authority had concluded the proposal would be contrary to Core Strategy Policy CS18 and that viability whilst it was a material consideration did not outweigh the harm of allowing the proposal contrary to the development plan.
10. The authority did not dispute the figures in the viability appraisal. The applicant has made reference to producing and reviewing the viability appraisals several times. Whilst I acknowledge that the applicant updated the property valuations and build costs during the appeal process, I do not consider this was completely necessary. The Authority had accepted that a policy compliant scheme would be unviable and this position was unlikely to change.
11. In the event the appeals were to be allowed, the Authority suggested a planning condition to restrict the occupancy of two of the proposed apartments. This could have been amended to require just one local needs unit thereby responding to scheme viability. However as I have outlined in my decision, even with one local need unit the scheme would not have been of sufficient viability for the developer to achieve a competitive return. Such a condition

would not have met the tests of reasonableness. I therefore consider that viability could not have been dealt with by a condition.

12. Accordingly I consider that the Authority was able to clearly substantiate its reason for refusal. The Authority has therefore not acted unreasonably in this regard.
13. I shall now turn to the second matter that the Authority made vague and generalised assertions about the impact of partial demolition. As the description of development for Appeal A included reference to partial demolition, it was reasonable for the Authority to seek clarity on this matter in order that they were able to fully understand the extent of demolition proposed. The appeal building is located within a conservation area. It was therefore appropriate for the Authority to assess the proposal against Saved Policy BE12 of the Lake District National Park Local Plan 1998 which provided policy guidance in this regard. As a result of the lack of information, the Authority was not able to come to a view on the impact of demolition on the appeal building or the conservation area. This was reflected in the wording of the reason for refusal. Accordingly I consider that the Authority did not make vague or generalised assertions about the impact of demolition.
14. The applicant has also suggested that the matter of demolition could have been dealt with through the imposition of a condition. However the appeal site is located within the Ambleside Conservation Area. The Authority has a statutory duty set down in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving or enhancing the character or appearance of conservation areas when considering development proposals. In order to meet this duty the Authority would require sufficient information and detail of the development proposed before making a decision. In light of the potential harm to a heritage asset, this would not be appropriate to be submitted at a later stage in the planning process. I therefore consider that this matter could not have been dealt with by a condition.

Conclusion

15. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated and a partial award of costs is not justified.

Helen Hockenfull

INSPECTOR