
Costs Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 22 May 2017

Costs application in relation to Appeal Ref: APP/N1730/W/16/3164507 Providence House, Bartley Wood Business Park, Hook RG27 9XA

- 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 Hart District Council for a partial award of costs against Bartley Way Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for "Erection of two buildings containing a total of 101 new residential dwellings (38 one bedroom and 63 two bedroom) and 227 m² of small office units. Associated infrastructure including bin stores, cycle stores, parking and landscaping."
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Hart District Council

2. The application for costs is in writing and seeks a partial award of costs to cover the unnecessary expense incurred in preparing and presenting evidence necessary to substantiate reasons for refusal 3 (affordable housing) and 4 (impact on the Thames Basin Heaths SPA), given that the appellant has lodged the appeal in the full knowledge that there is no reasonable likelihood that the appeal will be successful.

The response by Bartley Way Ltd

3. The appellant's response is in writing and its rebuttal falls into three categories. When the appeal was submitted it was reasonable to believe that there would be SANG available to mitigate against the impact of the development on the SPA. Even without SANG being available, the appellant is entitled to have the other reasons for refusal independently assessed. The Council did not spend much time in defending reasons for refusal 3 and 4.

Reasons

4. The *Planning Practice Guidance* 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.
5. Because of the appellant's prior notification no time was taken at the Hearing dealing with evidence about the third and fourth reasons for refusal. Furthermore, it was not unreasonable for the appellant to consider that there

was a reasonable prospect of securing a SANG allocation when the appeal was made in December 2016. But it should have been evident to the appellant that the Cabinet meeting on 6 April 2017 significantly altered the likelihood of the appeal site benefitting from a Council administered SANG. This report agreed an interim release of some limited SANG capacity for sites of 5 or fewer dwellings pending a full review to be carried out in July. I consider, in these circumstances, that it was unreasonable of the appellant to delay until 3 May 2017 before notifying the Council about its stance at the Hearing on SPA mitigation and affordable housing. It seems to me that earlier notification could have prevented the Council incurring some unnecessary expense in preparing for the Hearing. I note that the Council's Hearing Statement was submitted on 11 April 2017. However, it is not for me to comment on the quantum of any costs award.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the *Planning Practice Guidance*, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. 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 Bartley Way Ltd shall pay to Hart District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for the Hearing regarding reasons for refusal 3 and 4 concerning affordable housing and SPA mitigation.
9. The applicant is now invited to submit to Bartley Way Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

John Woolcock

Inspector