The Planning Inspectorate

# Costs Decision

Hearing held on 29 March 2017

Site visit made on 29 March 2017

**by Olivia Spencer BA BSc DipArch RIBA**

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

**Decision date: 5th June 2017**

**Costs application in relation to Appeal Ref: APP/K1128/W/16/3156062 Garden Mill, Derby Road, Kingsbridge**

- 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 h2land for a full award of costs against South Hams District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a residential development of 32 dwellings.

## Decision

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

## The submissions for h2land

2. The costs application was submitted in writing. The following additional points were made orally at the hearing: there has been a lack of co-operation regarding the s106 unilateral undertakings (UU). The undertaking for 4no. dwellings was sent to the Council on 25 November and the 5no. dwelling UU was submitted on 27 January 2017. The Council has been chased for a response since then – most recently by email on 23 March. The request for amendments sent 28 March 2017[1] came too late for it to be possible to make the requested changes, despite the many months the Council had had the UUs.

## The response by South Hams District Council

3. The response was made in writing. The following additional points were made orally at the hearing: the Council acknowledged that it has not responded to the submitted UUs as it might have done. However, the appellant would have had to prepare the UUs anyway. The Council solicitor is prepared to do the amendments themselves using the appellant's documents. The additional cost to the appellant will therefore only be those necessary to get the documents re-signed. The Council apologises but states that this would not therefore amount to a significant cost to the appellant.

## 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

[1] Appeal doc 7

for costs to incur unnecessary or wasted expense in the appeal process. These may be procedural or substantive. Examples given include:

- lack of co-operation with the other party or parties
- not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties
- prolonging the proceedings by introducing a new reason for refusal
- failure to produce evidence to substantiate each reason for refusal on appeal

5. The 4th reason for refusing the application was that the applicant has not adequately demonstrated that a sufficient level of affordable housing and other necessary financial contributions cannot be delivered. The applicant however entered into discussion with the Council, and the Council commissioned its own independent appraisal. As a result an agreed level of provision for a viable scheme was established prior to determination of the application. The Council is not obliged to take the advice of its officers. However, at appeal the Council failed to provide any evidence to support its position that the proposal would be viable with a higher affordable housing contribution and contributions to open space and education facilities. In thus failing to substantiate this reason for refusal the Council acted unreasonably resulting in wasted expense for the appellant in addressing this reason for refusal at appeal.

6. During the course of the appeal the appellant was frustrated in their efforts to agree a statement of common ground in respect of viability with the Council until very shortly before the hearing, and the Council acknowledge that it did not respond in a timely manner to draft s106 UUs. In failing to co-operate with the appellant or agree a statement of common ground in a timely manner the Council acted unreasonably. However, the resulting statement of common ground did little more than summarise the parties' relative positions and would not thus have amounted to significantly more than that which was produced as part of the submissions in respect of the 4th reason for refusal. With regard to the UUs, the Council undertook at the hearing to complete the requested amendments and though this has resulted in delay, the expense for the appellant again would not have been significantly increased.

7. The alleged negative impact of the proposal on the delivery of K4 did not form part of the reasons for refusal and did amount to the introduction of a new reason for refusal. In this the Council acted unreasonably. However, little or no evidence was provided to support this and correspondingly little of the appellant's evidence therefore addressed this. On this matter too therefore I find no evidence of significant wasted expense.

8. The officer's report clearly identifies the appeal site as forming part of allocated site K4 and the Council acknowledged that little or no weight could be given to the omission of K4 from the emerging plan. The balance of harm to the AONB against the benefits of the provision of housing is in large part a matter of judgement. That I have reached a different conclusion to that of the Council in these respects does not indicate unreasonable behaviour. The case made by the Council in respect of landscape impacts and design concerned in large part the very nature of the proposal and its layout. These are not matters that could reasonably have been addressed through the imposition of conditions and a failure to do so is not therefore unreasonable.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated only with regard to the 4th reason for refusal and that a partial award of costs is thus justified.

**Costs Order**

10. 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 South Hams District Council shall pay to h2land the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing that part of the case relating to *Refusal Reason 4* and attendance at the hearing to deal with the same; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to South Hams District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Olivia Spencer*

INSPECTOR