
Costs Decision

Hearing Held on 5 June 2019

Site visit made on 5 June 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th June 2019

Costs application in relation to Appeal Ref: APP/K1128/W/18/3215145 Brewery Quay, Island Street, Salcombe, Devon TQ8 8DP

- 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 Mr A Smith 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 the demolition of all existing buildings on site while retaining the eastern stone boundary wall and concrete quay, erection of circa 265sqm commercial floorspace at ground floor and a 6 bedroom dwelling with guest suite complete with existing access and the creation of four associated parking spaces.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG goes on to explain that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate the reasons for refusal on appeal. The appellant is of the view that the Council failed to provide substantive technical evidence to support any of the four reasons for refusal and therefore the decision, which was contrary to the recommendation of the Council's Planning Officers, was unreasonable.
3. The Council did not produce drawings demonstrating that the proposal would result in a loss of employment land or technical evidence that demonstrates the appeal scheme would result in the loss of a viable, locally important employment site.
4. Nevertheless, the Council confirmed at the hearing that it was broadly content with the accuracy of the drawings submitted by the appellant which showed a break down of the existing and proposed floor space. Instead, the Council confirmed that the matter in dispute was the interpretation of what constitutes employment floor space and land. The Council are of the view that the space around the appeal buildings should be classed as employment land as well as the garages and upper floors of the main building, even though they are little used or currently unusable. For the reasons set out in my formal decision I

- favoured the Council's interpretation in respect of the garages and floorspace and the appellant's in respect of the quay and courtyard. The interpretation put forward by the Council was rationale and reasonable.
5. Three viability reports support the appellant's proposition that if employment floor space is to be viably provided the appeal site requires redevelopment with an element of residential floor space. The Council refused the application despite this technical evidence. However, this course of action was not based on an absence of evidence. The Members of the Planning Committee employed their local knowledge that there is high latent demand for employment floor space and other premises, such as the Gin Distillery, have been developed without residential cross subsidisation.
 6. Furthermore, the concerns raised in the viability reports regarding the adequacy of access along Island Street were overstated and the site has been recently occupied, which would suggest the existing building can be let. The viability reports do not clearly explain that previous tenants paid rents below market values, a significant point explained at the hearing by the appellant and unchallenged by the Council. Moreover, the condition of the building was advanced by the appellant as a major limitation in finding a tenant, but a structural survey has not been submitted to support this proposition. Furthermore, the site has not been recently marketed.
 7. In my formal decision I ultimately found in favour of the proposal for the reasons given but the Council's case had some traction and the evidence presented was not unreasonably threadbare. Thus, the Council adequately substantiated and articulated the first reason for refusal.
 8. The concerns of the Council outlined in the second reason for refusal are over stated given the wider context of Island Street, where numerous other commercial properties, some not in marine related uses, are located in Flood Zones 2 and 3. Nevertheless, the Council were able to explain in a cogent way why it considers the proposal would fail to support marine based employment uses and, as the commercial units would not have an upper floor, the Council's concerns regarding the flood risk were not unreasonable.
 9. The acoustic report submitted with the appeal was not in front of the Council when it made its decision. The reasonableness of the third reason for refusal should be seen in this context. Moreover, the Officers' recommendation in respect of noise and disturbance was finely balanced given the concerns expressed by the Environmental Health Officer advising them. In the circumstances, Members of the Planning Committee were entitled to defer to their own knowledge and experience in the absence of a technical report at the time of the committee meeting.
 10. The Council has not provided a technical rebuttal document to the acoustic report, but the hearing was attended by Mr Kershaw, the Council's Environmental Health Officer. He advanced considered testimony that explored and questioned the evidence in the acoustic report and the overall appropriateness of a residential use at the appeal site. It is therefore inaccurate to suggest the Council's third reason for refusal was unsupported by evidence.
 11. The Council's fourth reason for refusal is predicated on subjective planning judgment relating to matters of design. The Council were able to articulate its concerns and relate them to published guidance including the Conservation

Area Appraisal. Accordingly, the fourth reason for refusal was adequately explained and corroborated.

12. In refusing the application the Council departed from the advice of its Planning Officers. It also departed from points Officers had already provisionally agreed with the appellant, such as the extent of the employment floorspace. However, the Council has been able to substantiate at appeal the four reasons for refusal given with reference to evidence, The National Planning Policy Framework and the development plan. Thus, the decision to refuse was not a substantive failing.
13. The appellant has also suggested that the Council's conduct at appeal has amounted to a procedural failing with its Statement of Case being submitted late and the Statement of Common Ground only agreed shortly before the hearing commenced. Although a failure to adhere to the appeal process is unhelpful the appellant has not explained what unnecessary expense this delay resulted in. A list of suggested conditions was submitted after the hearing closed but this was at my request and was a revision to the list previously tabled and discussed at the hearing. The Council also submitted further points relating to the Neighbourhood Plan after the hearing closed, which is unorthodox. However, the points made reiterated those advanced at the hearing and therefore no prejudice occurred.
14. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred in either a substantive or procedural sense. Hence, the application for an award of costs should fail.

Graham Chamberlain,
INSPECTOR