
Costs Decision

Site visit made on 13 August 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Costs application in relation to Appeal Ref: APP/N0410/W/19/3228979 Cut Heath House, Parsonage Lane, Farnham Common SL2 3PA

- 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 South Bucks District Council for a partial award of costs against Mr & Mrs Richard Pomeremke.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for redevelopment of site to provide 8 detached dwellings with integral garages without complying with a condition attached to planning permission Ref 17/01853/FUL.
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Decision

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

Preliminary Matter

2. The costs application submitted by the Council does not expressly state whether a full or partial award of costs is sought. However, by reason of the information contained within the costs application, I have interpreted the application as being as an application for a partial award of costs solely in respect of the costs associated with having a financial viability assessment independently reviewed, and I shall consider it on that basis.

Reasons

3. Planning Practice Guidance (the PPG) advises that, 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 expense in the appeal process¹.
4. The PPG sets out examples of unreasonable behaviour by appellants. These include delays in providing information or other failures in adhering to deadlines and only supplying relevant information at appeal when it was requested but not provided at application stage.
5. The applicant states that costs should be awarded because the appellants acted unreasonably in refusing to provide payment in respect of the Council's expenses incurred in reviewing the Financial Viability Assessment that was submitted in support of the application.

¹ Paragraph: 030 Reference ID: 16-030-20140306

6. The South Bucks District Council Affordable Housing Supplementary Planning Document (2013) (the AHSPD) provides that in circumstances where planning permission applicants consider that there are constraints which would prevent them from delivering the Council's affordable housing requirements, a robust financial viability appraisal will be required.
7. The AHSPD further provides that such appraisals will be subject to independent validation and evaluation by an independent assessor of financial viability as specified by the Council. It is clear from the text of this document that the Council may choose whether they engage the District Valuer Service (the DVS) or another independent assessor.
8. On that basis the Council consider that the appellants would have been aware of the requirement to raise viability if disputing the affordable housing contribution and of the requirement to provide a financial appraisal and, crucially, fund the Council to pay a consultant to independently assess that evidence. Despite having previously submitted a Section 106 agreement with regard to affordable housing provision and despite having submitted a financial viability assessment with the application, the appellants refused to pay the relevant fee for the Council's preferred independent assessor. The Council wish to reclaim the costs of the independent consultant's review of the appellants financial viability case.
9. In this particular case, the appellants maintain that it was only reasonable that the Council instruct the DVS in respect of the independent assessment of the viability appraisal and consequently offered a sum in relation to the costs that the appellant believed would be charged by the DVS in respect of such services.
10. It is important that Councils are able to have viability appraisals independently and robustly assessed, in order that they can be satisfied that any reduction in the Policy Compliant Affordable Housing contribution is justified. In this regard I find that the reasons given by the Council as to why they prefer to obtain independent assessment from organisations other than the DVS to be reasonable. Furthermore, given that the Council provided quotes from more than one independent assessor, the Council acted proportionately and in a reasonable manner.
11. In light of the above, and from the evidence before me, it is apparent that the appellants were aware of the requirement that the viability assessment produced by their consultants be independently assessed and that that assessment would be conducted by an independent assessor as specified by the Council. There was no requirement that the Council must instruct the DVS.
12. Consequently, in my view, if the appellants had agreed to meet the costs of the specified independent assessor, as required and explained under the AHSPD, delays to the application may have been avoided. Furthermore, whilst it will be seen from my decision on the main issues that I agree with the eventual findings of the report produced by the appellants viability consultant, it was reasonable that the Council sought an independent review of the appellants' viability assessment and that it was therefore unreasonable that the appellants did not provide the relevant fee to the Council.
13. In conclusion, having regard to the above, and all submitted evidence relating to this costs application, I therefore find that unreasonable behaviour resulting

in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. In exercising 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 Mr and Mrs Richard Pomeremke shall pay South Bucks District Council the partial costs of the appeal proceeding described in the heading of this decision in regard to the costs associated with the independent review of the submitted Financial Viability Assessment by their specified assessor, Avison Young; such costs to be assessed in the Senior Courts Office if not agreed.
15. South Bucks District Council is now invited to submit to Mr and Mrs Richard Pomeremke, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Spencer-Peet

INSPECTOR