



Costs Decision

Hearing Held on 16 October 2019

Site visit made on 16 October 2019

by Stephen Wilkinson BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2019

Costs application in relation to Appeal Ref: APP/T1410/W/19/3229465 Spring Mead, 25 Meads Brow, Eastbourne, BN20 7UP

- 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 Turnbull Land Ltd for a full award of costs against Eastbourne Borough Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for 'demolition of the existing house and the construction of a new building housing 17 one- and two-bedroom apartments with associated access and parking.'
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Decision

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

The submissions for Turnbull Land Ltd

2. The applicant has made their application on both procedural and substantive grounds. In summary these cover the following points:
 - Delays in responding to the Statement of Common Ground (SoCG) and written appeal statement
 - No independent interrogation of the Financial Viability Assessment (FVA)
 - Consideration of the proposed roof design when appearance and scale are reserved matters
 - Consideration of the international dark sky reserve
 - Pedestrian footpath and access arrangements.

The response by the Council

3. In summary, the Council's position is identified in corresponding bullets set out below:
 - The Council have responded in a timely manner to all deadlines including those set by the Inspectorate
 - There was no evidence in the application to demonstrate how the hierarchical assessment had been applied as required by paragraph 4.6 of the Affordable Housing Supplementary Planning Document (SPD). As

this had not been provided then it was determined that further expenditure of public money was unnecessary.

- Whilst acknowledging that the application is only submitted in outline including reserved matters of access and layout to be determined at this stage there was a need to adequately assess how 17 flats could be accommodated on site. Drawings submitted with the application would enable an accurate assessment of the relationship of the proposed buildings to surrounding properties.
- The Council acted in a cautious manner as the application did not demonstrate how the design could affect the reserve
- The Council is not offering evidence to refute this issue.

Reasons

4. Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the process. I shall aim to address each strand of the applicant's case in turn.
5. The Council did delay on several occasions in responding to the applicant's requests for information but in some cases there was good reason. For example, its delay in responding to the applicants request for a SoCG was justifiable until a hearing date had been agreed by the Planning Inspectorate. Although the receipt of a completed SoCG well in advance of the hearing would have been convenient it is difficult to see how any party has been prejudiced by the delays. Although the Council's appeal statement was submitted late I do not consider that the applicant has been prejudiced by this. The applicant has not offered up any information to substantiate how the Council's late submission of its case had inconvenienced them and what additional costs were incurred as a result.
6. In respect of the FVA I consider that the Council should have completed an independent financial analysis. This was clearly its original intention and reflected the comments of the Housing Policy Officer but due to constraints on the District Valuer's (DV) time this was not possible within the prescribed time frame for consideration of the application. It is unclear what informed the Council's decision made at an internal officer meeting that because a hierarchical assessment had not been included in the application then its own FVA or critique was not required. Completion of the FVA would have allowed a thorough examination of the alternatives identified in paragraph 4.6 of the SPD. Different decisions seem to have been reached on this matter during the consideration of the application. I consider that this represents unreasonable behaviour by the Council given that this is a central issue to this application. In my opinion it has led to unnecessary costs by the appellant in addressing this reason at the Hearing.
7. In respect of the Council's withdrawal of its objection during the hearing to the flat sections of the roof design I consider that it was unreasonable behaviour to withdraw this part of the reason at such a late date. In my opinion this would have led to some unnecessary expenditure by the appellant in addressing this part of the reason in documentation and at the hearing.

8. Regarding the other issues re scale and appearance although these are reserved matters I consider that some consideration had to be given to them at this stage of the application process given the applicant's submission of floor plans and an indicative elevation. The Committee which imposed this additional reason for refusal was entitled to do so in the absence of officer advice on this matter. The Council's statement is supported by reference to its saved policies. I find therefore that the Council did not behave unreasonably regarding this matter.
9. In the absence of clear policy support it was unreasonable to include the Dark Skies Reserve as a reason for refusal. The Council describes its approach as 'precautionary'. However, given the size of the scheme, its distance from the National Park and the outline basis of the application I consider that this was unreasonable behaviour and has resulted in the appellant incurring unnecessary expenditure in addressing this reason.
10. Finally, on the issue of access this is a matter of judgement and I consider that the Committee was entitled to reach its own judgement. This was subsequently resolved through revised plans to the satisfaction of the main parties after the decision had been made and included in the SoCG. I do not consider that the Committee had been misled by the officer's report on this topic as the applicant states. Accordingly, I do not consider that this amounts to unreasonable behaviour.

Conclusions

11. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense of the type I have identified above and as described by the Guidance has been demonstrated in respect of the issues of the consideration of the FVA for affordable housing, the roof design and the Dark Skies Reserve.

Costs Order

12. 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 the Eastbourne Borough Council shall pay to Turnbull Land Ltd, the costs of the appeal proceedings described in paragraph 11 and above.
13. The applicant is now invited to submit to Eastbourne Borough 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. In the event that the parties cannot agree on the amount, a copy of the note on how to apply for a detailed assessment by the Senior Courts Costs office is enclosed.

Stephen Wilkinson

INSPECTOR