



Costs Decision

Site visit made on 17 September 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Costs application in relation to Appeal Ref: APP/M3835/W/18/3217977 22 Lyndhurst Road, East Worthing, Worthing BN11 2DF

- 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 Roffey Homes for a full award of costs against Worthing Borough Council.
 - The appeal was against the refusal of planning permission for *'demolition of existing two storey building and erection of a three / four storey block of 30 apartments comprising of four no. one bedroom, 24 no. two bedroom and two no. three bedroom units, provision of undercroft access to car park to the rear, a new access on Farncombe Road, removal of trees and associated landscaping'*.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council failed to produce evidence to substantiate the reason for refusal in a timely fashion to enable amendments to be made. That it made limited, vague and inaccurate negative assertions about the proposal's impact prior to refusal of the planning application, provided inaccurate pre-application advice and failed to provide reasonably requested information when a more helpful approach would have resulted in the issues to be considered through the appeal being narrowed.
4. The appeal proposal is clearly the culmination of lengthy discussion between the parties, during which the applicant presented detailed and resourceful evidence and responded proactively to the Council. It is evident that the Council's expressed opinion of the scheme has developed in a manner that has not been at all times helpful to the applicant or conducive to a smooth or faultless process. This has been exacerbated by changes to the officers involved, and times of limited contact from the Council, particularly in the intervening period between the March and July committees.
5. I agree that had the Council set out its detailed position in a timelier matter, this would have allowed the applicant more time to consider its position. In this sense, I can appreciate the clear frustrations which have been raised.
6. That being said, the appellant's undisputed viability position made it clear that there became a point in the process at which there was no prospect of further

amendments to the scheme. Given such, it seems to me that the actions of the Council prior to refusal of the planning application did not prevent amendments being made. Furthermore, there is no evidence that, had the Council engaged with the latest submissions of the applicant, including the 3D model submitted after the scheme's first appearance at the March committee, it would have changed its position on the proposal altogether.

7. The pre-application response was inherently broad-brush in its tone, and therefore could fairly be described as limited. However, the committee report acknowledges the negative contribution of the existing building and provides a detailed analysis of the proposal. It acknowledges the benefits of providing housing within the well-located and previously developed appeal site. The amount of weight to be attributed to these factors was a matter of planning judgment.
8. Although the Council did not qualify the level of harm to the Farncombe Road Conservation Area when it refused planning permission, it did so at the appeal. Whilst I agree that the Council did not fully engage with the full breadth of the applicant's viability argument, I have found that this was not a decisive matter in the outcome of the appeal.
9. As such, I find that the officer reports to the planning committee and the Council's submissions at the appeal offer adequate detail and analysis of the proposal. It cannot therefore be fairly argued that the Council failed to provide substantive evidence of its position, or that the evidence was either vague or without foundation. Given these circumstances, I do not share the view that the Council could have acted differently to narrow the scope of the appeal.

Conclusion

10. Taking all matters raised into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Matthew Jones

INSPECTOR