



Costs Decision

Hearing Held on 22 October 2019

Site visit made on 23 October 2019

by Sarah Housden BA (Hons) BPI MRTPI

Decision date: 7th January 2020

Costs application in relation to Appeal Ref: APP/A4520/W/18/3217280 Mangos Waters Edge, Trow Lea, South Shields NE33 2JH

- 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 Tyneside Metropolitan Borough Council for a partial award of costs against Mr Kevin Brogan.
 - The hearing was in connection with an appeal against the refusal of planning permission to 'demolish existing public house and construct 23 residential apartments in one three storey development with detached garage blocks, car parking, boundary treatments, detached bin store and vehicle access/egress'.
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Decision

1. The application for a partial award of costs is refused.

Procedural Matter

2. The Council's verbal application for a partial award of costs and the appellant's verbal response were made at the hearing.

The submissions for South Tyneside Metropolitan Borough Council

3. The basis of the Council's claim is that the appellant has acted unreasonably in relation to reasons 2, 3 and 4 of the decision. The second and third reasons for refusal indicate that there was insufficient information with the planning application to enable an assessment of the impact of the proposed development on the integrity of the Durham Coast Special Area of Conservation, the Northumbria Coast Special Protection Area, the Durham Coast Site of Special Scientific Interest and The Leas Local Wildlife Site. The fourth reason for refusal relates to the absence of contributions towards affordable housing which are required to comply with Policy SC4 of the Local Development Framework Core Strategy.
4. The Council expressed a number of concerns about the legality and execution of the Unilateral Undertaking (UU) which I deal with in my decision. The Council considered that this led to uncertainty about whether the impact of the development on designated sites and affordable housing provision could be satisfactorily mitigated. The Council also indicated that it had to respond to the point raised by the appellant at the hearing that a negatively worded condition could be used to secure a planning obligation which would provide for the necessary mitigation measures before development commenced on site. The Council also considered that the appellant's decision to remove the 'no pet

covenant' from the draft heads of terms for the s106 agreement as a means of mitigating the impact of the development on designated sites represented a significant change to which it had to respond to as part of the appeal process.

The response for Mr Kevin Brogan

5. The appellant considers that the reliance on financial contributions secured by the UU in accordance with Supplementary Planning Document 23 (SPD23) 'Mitigation Strategy for European Sites' which is referenced in the final Statement of Common Ground represented a reasonable approach to mitigate the impact of the development on designated sites. The move away from a 'no pet' covenant was considered to be reasonable based on the strategic mitigation that would be secured through SPD23 and through the use of conditions to secure specific measures to manage the activities associated with residents' pet ownership. The appellant indicates that the Council's position in relation to the UU was clearly set out in its Statement of Case and therefore no additional work or unnecessary expense was incurred.

Reasons

6. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and this has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The points raised by the appellant about the mitigation for designated sites were ones that the Council could have reasonably expected having to respond to based on the reasons for refusal and the appellant's Statement of Case and supporting evidence. The Council was aware well in advance of the hearing that the no pet covenant was no longer being proposed as part of the UU and had sufficient time to prepare for and respond to that position. It is a normal part of the hearings procedure that points are raised and responded to by the respective parties during the discussion and there was nothing unusual or unexpected in that regard.
8. The appellant submitted a response and opinion to respond to the Council's position on the legality and execution of the UU on 3 October 2019. Whilst this was after the deadline for the submission of evidence, the Council had an opportunity to respond to the submitted documents well in advance of the hearing and I have taken account of those comments in coming to my conclusion on the legality of the UU in my decision.
9. The appellant's points about the manner in which the planning application was processed including the availability of consultation responses is not a matter on which I can comment as part of this costs decision.
10. For the reasons outlined above, I conclude that the appellant has not acted unreasonably and no unnecessary or wasted expense has been incurred by the Council. A partial award of costs is not justified.

Sarah Housden

INSPECTOR