
Costs Decision

Site visit made on 15 September 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2020

Costs application in relation to Appeal Ref: APP/P1615/W/20/3254588 Severn Bridge Park Homes, Former Buttington Works, Beachley NP16 7HQ

- 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 Jason Smith of Tremlo Limited for a full award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of planning permission for change of use of disused industrial site to extend adjacent existing park homes site with 29 residential park homes. Demolition of existing buildings. (Resubmission), with extended flood wall defence.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG provides a number of potential examples of unreasonable behaviour by local planning authorities including lack of co-operation with the other party or parties, among other things.
3. The applicant claims that the pre application advice issued by the Council was misleading in light of the matters considered during determination. However, I cannot come to the same view, as the matters raised in the pre application advice appear consistent with the matters considered when the Council determined the application. In any event, the pre application advice was from a significant period of time before the most recent application and not specifically related to the evidence submitted under it.
4. Furthermore, in accordance with PPG, pre application advice cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made. Consequently, irrespective of what the applicant claims about the conclusions of the advice, these considerations taken together suggest that it was not sensible to rely on it in isolation or make the presumption that a subsequent planning application should be granted.
5. From the evidence presented it appears the Council entered into correspondence with the applicant on various matters including strategic housing land availability assessment and what sites to broadly consider pursuant to preparing a sequential test. There is no evidence suggesting that they refused to cooperate.

6. The Council directed the applicant to publicly available information within the Forest of Dean Allocations Plan 2018. This information could have been used by the applicant independent of the Council's disclosure to inform the sequential test. It was the applicant's role to review the relevant available information and submit to the Council a robust sequential test. It does not appear that the Council acted as any form of barrier in this respect and they were transparent in their actions.
7. The reason for refusal relating to flood defences was pursuant to inadequate information specifically relating to the ground conditions at the site, notwithstanding the Environment Agency's position that the flood protection scheme would theoretically defend the development against flood risk. Under the appeal, I found such evidence was necessary to understand how the scheme would be delivered in the context of character and appearance. Consequently, the Council's reason for refusal in the absence of such evidence was not unreasonable.
8. Overall, the applicant has failed to demonstrate that the Council acted unreasonably and that this led to unnecessary expense under the appeal.

Conclusion

9. For the reasons given, the application for an award of costs is therefore refused.

Liam Page

INSPECTOR