
Costs Decision

Site visit made on 15 September 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th October 2021

Costs application in relation to Appeal Ref: APP/C3810/W/21/3271024 Croft Works, 52 Mill Lane, Rustington BN16 3JN

- 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 Ms V Walden for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for demolition of existing dilapidated storage buildings and erection of 2 No. detached 3-bedroom chalet bungalows with associated car barns, gardens, car parking & landscaping.
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Decision

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

Reasons

2. 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 caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant has applied for costs on substantive grounds on the basis that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant considers that the Council's Development Control Committee acted unreasonably in their refusal to take account of evidence presented to them at the meeting.
4. In this case the Council's officers recommended approval but the Council members did not accept the recommendation. The decision is one which is a matter of judgement. Members are not duty bound to follow the advice of their professional officers, however, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. The application was originally presented to the committee in January 2021 but a decision was deferred to check the width of the access road complies with building regulations for access by fire service vehicles. At the same time, further consultation was carried out with both West Sussex County Council as the local highway authority and the Council's Building Control service.
6. The local highway authority raised no objection to the scheme and Building Control confirmed that the use of a sprinkling system was acceptable. The

Council's officer recommended the inclusion of a condition to secure this. The local members did not agree with this recommendation and refused planning permission. It has been suggested that members based their decision on their local knowledge of the area and on their perceived impact of the development on pedestrian safety and access to the site given the variable width of the drive.

7. Evidence was provided from the local highway authority that the scheme would not intensify the use of the access in addition to advice from both Building Control and West Sussex Fire and Rescue Services (WSFRS) stating that a sprinkler system would be acceptable. This was not accepted by members. However, no substantive evidence was put to me to suggest that a decision should be taken otherwise than in accordance with this advice. Accordingly, it will be seen from my decision that I have found the scheme to be acceptable.
8. I have been referred to a recent appeal decision and associated application for costs¹ at McIntyre Nursery, Ferring. In that case, members also took a different view to officers and refused permission. The Inspector refused an award of costs on the basis that there were sufficient grounds for members to reach an alternative conclusion. I do not find this to be the case in the appeal before me.
9. In these circumstances, the refusal of planning permission constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the applicant has been faced with the unnecessary and wasted expense of lodging the appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Arun District Council shall pay to Ms V Walden, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Arun District 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.

Rachael Pipkin

INSPECTOR

¹ APP/C3810/W/21/3269319