The Planning Inspectorate

Costs Decisions

Site visit made on 2 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 November 2021

Application A: Costs application in relation to Appeal Ref: APP/K1128/X/20/3252613
Land to the north of Seymour Drive, Dartmouth

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Roark Investments LLC for a full award of costs against South Hams District Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for private undeveloped land relating to the area edged red on the submitted plan 17006_PL502 in continuous breach of condition 7 and the non-application of conditions 6 and 8 of 15/1790/98/F which required the laying out, landscaping and use as an area of open grassland accessible to the public in the interests of the visual and residential amenities of the locality and to assimilate the development into its surroundings.

Application B: Costs application in relation to Appeal Ref: APP/K1128/W/20/3252623
Land to the north of Seymour Drive, Dartmouth

- 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 David Holloway for a full award of costs against South Hams District Council.
- The appeal was against the refusal of planning permission for 9 dwellings and associated works.

Decisions

Application A: Appeal Ref: APP/K1128/X/20/3252613

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

Application B: Appeal Ref: APP/K1128/W/20/3252623

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

Procedural Matters

3. In my appeal decisions I have noted that shortly after the appeals were submitted Mr Holloway sold the land to Roark Investments LLC. Although both appeals still proceeded in Mr Holloway's name, only Application A appears to have explicitly been made by the new owners. I have therefore treated Application B as being made by the appellant.

4. As touched upon in my appeal decision, the address given above is not quite how the site is referred to in either appeal. However, both parties will be clear as to the land involved.

5. Application A was made as part of the appellant's final comments on Appeal A. Application B was made by email dated 15 October 2020. The two applications are materially the same and I shall therefore deal with them together. Rebuttal responses were made by the applicant on 15 October 2020 (Application A) and 28 October 2020 (Application B).

6. The Council's response to Application A was dated 7 October 2020 and that to Application B is not dated but appears to have been received by the Planning Inspectorate around 21 October 2020.

Applications A and B: Reasons

7. The 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.

8. As the applications are somewhat opaque, I have reminded myself of the advice in the PPG as to what may amount to the unreasonable behaviour by a local planning authority that may risk a procedural and/or a substantive award of costs.

9. With respect to Application A, there is no basis for the award of costs claimed. As noted in my appeal decision, the application never had any realistic prospect of success.

10. The burden of proof rests on the appellant. Although it is regrettable that the Council was unable to provide the approved drawing MH232/323A, without it, the appellant had no basis for arguing that there had been a failure to comply with or strictly adhere to condition 7 of the 1999 permission. It was for the appellant to produce the approved drawing.

11. It was clear from the totality of the evidence that there had been some tree planting on the appeal site. Even the appellant gave evidence to that effect. Whether or not that planting was in accordance with the approved scheme, it was removed in December 2018. It is clear that the Council believed that to amount to a failure to comply with condition 7 of the 1999 permission as it interpreted it. It was therefore still open to the Council to take enforcement action at the LDC application date.

12. The appellant did not appear to understand the law on this point. What matters is not whether any enforcement action taken would be upheld on appeal, but whether it could have been taken at all, that is, not time barred. It was not, so a LDC in the terms applied for could not have been granted.

13. The Council has not therefore behaved unreasonably in any respect with regard to Appeal A and no award is justified in respect of Application A.

14. Turning now to Application B, I deduce the gist of the case to be that the Council took against the appellant for clearing the appeal site of planting and concocted reasons for refusal of his planning application. There is a

supplementary point relating to a statement of common ground which does not appear to have been submitted in evidence.

15. It is clear that, whatever the applicant may consider the motives, the Council determined the planning application in accordance with s38(6) of the Act and gave clear reasons, citing relevant development plan policies, for refusing the application.

16. It is unsurprising that the applicant did not agree with those reasons and launched an appeal as is the statutory right. In response, the Council produced evidence in respect of each reason. That I agreed with the Council is neither here nor there in dealing with this application. The material point is that the Council met its obligations and there are, as a consequence, no grounds for an award of costs in this respect.

17. With regard to the statement of common ground, the case made seems to relate to the Council's alleged failure to engage with the appellant. The Council has responded in great detail to this allegation. Included in the response is a comment that the draft statement required the Council, in effect, to concede the s78 appeal. I have no basis to disagree with the assertion of the applicant that some emails from the Council were not received. However, in my view, the applicant has failed to explain how any of this was prejudicial to the conduct of the appeal. On this aspect of the application, I also find that there has been no unreasonable behaviour on the part of the Council.

Applications A and B: Conclusions

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in respect of either application.

Brian Cook

Inspector