



Costs Decision

Site visit made on 12 January 2022

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2022

Appeal Ref: APP/B1415/W/21/3276360

10-12 Astec House, Sedlescombe Road South, St Leonards on Sea, East Sussex, TN38 0TA

- 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 Astec Computing (UK) Ltd for a partial award of costs against Hastings Borough Council.
- The appeal was for redevelopment to provide a mixed scheme comprising 225.9sqm of business floorspace and 1 x 1 bed, 7 x 2 bed and 1 x 3 bed apartments, together with associated parking.

Decision

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

Reasons

2. 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.
3. The appellant seeks a partial award of costs on the basis that the Council failed to substantiate its reasons for refusal, primarily reasons 3 and 4. These reasons relate to the living conditions of the occupiers of the neighbouring property (reason 3), and the future occupiers of the penthouse flat 9 (reason 4). In relation to both matters the appellant offered alternative arrangements as part of the appeal comprising revised plans or suggested conditions. The Council has not responded to the costs application.
4. There is an element of planning judgement in relation to these matters. Whilst loss of privacy was not a matter raised in the previous appeal decision it is not unreasonable for the Council to assess this aspect as it is a different scheme. However, I agree with the appellant, with reference to the officer's report and appeal statement, that the Council do not appear to have had regard to their approach to the previous scheme. Nonetheless, this would not have prevented the appeal or the need to address comments raised by third parties on this matter. Additionally, the Council had considered the potential for the use of a condition in relation to the windows at the application stage¹.
5. Therefore, in my view, the Council did support its position and I do not find the appellant incurred unnecessary or wasted expense in addressing reason 3.

¹ Officer's report section d)

6. In relation to reason 4, as set out in my decision, I found the need for the bedrooms to be served by a window (not French doors) was not supported by reference to any specific guidance or policy. The Council's appeal statement does not offer any further explanation of the issues or indicate if the alternative design put forward by the appellant would have addressed their concerns.
7. Setting aside the issue as to whether the potential amendment was non-material, I find that the Council did not substantiate their concerns and left the appellant with a lack of clarity as to what may or may not be appropriate fenestration to a bedroom. Accordingly, I find that the Council acted unreasonably and contrary to the aims of the costs regime, which as set out at paragraph 28 of the PPG, includes encouraging local planning authorities to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
8. Whilst responding to reason 4 was only a small part of the case there has been additional and unnecessary expense for the appellant in seeking to address the matter. Thus, a partial award is justified to cover the related expenditure.
9. The appellant has referred to a number of other matters which they consider the Council has not covered in their appeal statement, including changes made compared to the previous scheme, efficient use of a brownfield site and the tilted balance, however, these were covered in the officer's report, and it is not necessary to repeat them.
10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to reason 3. However, the Council did behave unreasonably in objecting to the scheme on the basis of harm to the living conditions of the future occupiers of flat 9 which was not substantiated. This unreasonable behaviour led to the applicant incurring unnecessary or wasted expense in addressing reason 4 at appeal.

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 on that behalf, IT IS HEREBY ORDERED that Hastings Borough Council shall pay to Astec Computing (UK) Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending arguments relating to the living conditions of future occupiers of flat 9 (reason 4).
12. The applicant is now invited to submit to Hastings Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G Ellis

INSPECTOR