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## Costs Decision

Site visit made on 31 January 2022

**by Robin Buchanan BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> February 2022**

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### **Costs application in relation to Appeal Ref: APP/C1435/W/21/3276480 The Holy Rood Catholic Church, Castle Drive, Pevensey Bay BN24 6JP**

- 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 Mrs T Richardson for a full award of costs against Wealden District Council.
  - The appeal was against the refusal of planning permission for conversion of existing building to 2 no. four bedroom dwellings and construction of 2 no. new four bedroom dwellings.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (the 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<sup>1</sup>.
3. The essence of the application is that the Council:
  - failed to determine the application within the statutory period and did not engage positively prior to its decision;
  - refused permission primarily relating to flood risk, despite no objection by a relevant statutory consultee and inconsistent with another decision; and
  - included 'minor' reasons for refusal that were unwarranted.
4. As a result, the applicant considers that the Council prevented or delayed development which should clearly have been permitted and that the appeal was avoidable. I have also taken the Council's comments on the application into account in my decision.
5. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, having regard to the development plan and the Framework, they should not be liable for an award of costs<sup>2</sup>.

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<sup>1</sup> PPG paragraph ID: 16-030-20140306

<sup>2</sup> PPG paragraph ID: 16-050-20140306

### *Statutory period and engagement*

6. The applicant was dissatisfied with the manner in which the Council handled the application prior to its decision. While I am mindful of the Council's obligations with regard to the statutory period, increased workload and the impact of the Covid-19 pandemic were contributory factors in delay. I have no reason to doubt the sincerity of this explanation. Pre-application engagement may have revealed the Council's flood risk concerns. It may also have facilitated common ground before an application was submitted or at least narrowed any differences. This might have saved time after the application was submitted. While seeking such advice is not obligatory, and I appreciate that it is a fee based service, this was not pursued by the applicant.
7. There was some final email exchanges between the main parties prior to the Council's decision, but further dialogue did not take place for reasons that are not clear to me. Nonetheless, there is no evidence of any sustained lack of cooperation or in providing information by the Council. Since there was by then a fundamental difference between the main parties on flood risk, it is unlikely that further dialogue would have resulted in a different outcome or averted the Council's decision to refuse planning permission.

### *Consultee and consistency*

8. The Environment Agency (EA) did not object to that part of the Exception Test relating to safety. That said, it recommended consideration of the 'undefended' flood defence scenario with up-to-date climate change allowances. That is the position the Council took, including to take account of potential 'breach events'. It maintained this as part of its flood risk reason for refusal and substantiated it at appeal. Whether or not the development provided wider sustainability benefits to the community that outweighed flood risk was a matter for the Council, not the EA (as the EA also confirmed). The Council sustained this part of the reason for refusal at appeal. The Exception Test did not form a substantive part of my appeal decision for the reasons I have given.
9. The planning history at 164 Coast Road, Pevensey Bay (164CR) formed a significant part of the applicant's appeal case. However, the previous appeal decision does not absolve the applicant from preparing a suitable planning application supported by requisite reports and the costs therein incurred, including on flood risk assessment and the Sequential Test, and then sustaining its position at appeal.
10. I appreciate that, at face value, the Council's objection on the Sequential Test in the current appeal may appear illogical against its decision at 164CR. However, the Council's decision to grant planning permission for a fresh application at 164CR was in the context of the specific findings of the previous appeal Inspector, which in turn were made on the particular evidence before him. Despite that the Council did not respectfully agree with the Inspector on the Sequential Test, the applicant in that case had overcome the living conditions reason why the appeal was dismissed. In those circumstances, the Council reasonably made the decision that it did.
11. The 164CR appeal decision was referred to in the Council's officer report and in its appeal statement. The Council was plainly aware of it. In this regard, in dispute in the current appeal was the significance of that decision and, in my decision, a matter to be evaluated in the context of the sum of the evidence

before me, not just the previous Inspector's appeal decision letter. Accordingly, in making the decision that it did in this current appeal case, I consider that the Council did not act inconsistently with the decision it took at 164CR, rather that its decision in that case and in the current appeal case, and my appeal decision, have been informed by materially different considerations. It will be evident from my reasons and decision to dismiss the appeal that I consider the Council did not prevent or delay development which should clearly have been permitted.

*Minor reasons for refusal*

12. Car parking and raised decking (living conditions) are material planning considerations. There was a difference of professional judgement in these regards and in how best to deal with these matters. The Council set out its reasons in its officer report and maintained its position at appeal. Absent these reasons, it is clear that the Council would nonetheless have still refused the application because of flood risk. There was therefore no scope to impose conditions or any meaningful purpose in seeking amendments to the plans at application stage and the revisions have been considered at appeal stage. The applicant's appeal case on these issues was limited and comprised a small part overall. It was not a determinative main issue in my decision.
13. While the circumstances outlined above have led the applicant to decide to pursue the matter through the appeal process, parties in planning appeals normally meet their own expenses<sup>3</sup>.

**Conclusion**

14. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. A full award of costs is not therefore justified, nor is a partial award for the same reasons.

*Robin Buchanan*

INSPECTOR

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<sup>3</sup> PPG paragraph ID: 16-028-20140306