



Costs Decision

Site visit made on 17 January 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th April 2022

Costs application in relation to Appeal Ref: APP/D1590/W/21/3272515 Crowstone Preparatory School, 121-123 Crowstone Road, Westcliff-on-Sea SS0 8LH

- 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 Southend on Sea Borough Council against BESB Contracts Ltd for a full award of costs.
 - The appeal was against the refusal of planning permission for 18 No. new apartments.
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Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may only 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 appeals process. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the Guidance states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. Since the appellant sought to appeal the decision of the Council, it received a separate decision¹ for an appeal for a development of eight dwellings at the site. As this separate appeal was dismissed, the applicant states that the appellant should have been cognisant that a development of 18 flats at the site would not be considered favourably and would not have a reasonable prospect of success.
4. Moreover, the applicant also argues that the appellant acted unreasonably by not providing the resources to independently assess the viability of the scheme, and for pursuing a development that failed to satisfy the minimum floor area requirements as set out within the Technical housing standards - nationally described space standard 2015 (NDSS).
5. It is evident that the appeal scheme before me was submitted prior to the decision for eight dwellings at the site being issued and dismissed. It is also clear that the schemes propose different housing developments on the site. Although the dismissed appeal is a material consideration, and shares some design features, the fact that one Inspector may have found a scheme at the site unacceptable does not mean that a subsequent proposal for a quite

¹ APP/D1590/W/20/3260593 dated 12 July 2021

different scheme will suffer the same fate. Moreover, the appeal before me also raised different issues to that which was dismissed at the site and was considered on its own merits. Thus, I do not find that the appellant acted unreasonably on this matter, and an award of costs is not justified.

6. The applicant sought funding from the appellant for an independent viability assessment. Although the appellant did not agree to such funding, there is nothing before me to demonstrate why the applicant could not have commissioned an assessment itself. The fact that the appellant did not agree to provide additional funding does not, to my mind, amount to unreasonable behaviour from the appellant and an award of costs is not justified.
7. Turning to the space standards, although the appellant considered that the second bedroom of unit 10 was a single bedroom, it is quite clear that the remaining 17 units of the proposed development would have met the requirements of the NDSS. Therefore, in considering the development in a pragmatic manner, I am not persuaded that the appellant deliberately sought to obtain a single unit that did not meet the requirements of the NDSS and therefore, acted in an unreasonable manner an award of costs is not justified.

Conclusion

8. Thus, on the evidence before me, I am therefore satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and an award of costs is not justified.

Graham Wyatt

INSPECTOR