



Costs Decision

Site visit made on 28 April 2023

by L Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Costs application in relation to Appeal Ref: APP/D1265/W/22/3312041 7-9 High Street, Gillingham, Dorset SP8 4AA

- 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 P Langdown of Langdown Commercial for a full award of costs against Dorset Council.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO) for change of use from Class E to Residential (C3).
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
3. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities and the applicant considers that the Council have exhibited unreasonable behaviour on a number of these.
4. I am not convinced that the Council 'misled' the applicant in to agreeing the extension of time due to their omission to consult the Environment Agency, given that flood risk is one of the relevant 'conditions' of Class MA. However, it was unfortunate that during the extension of time period, the planning officer appears to have received some verbal communication with the clerk of the Town Council. The Town Council clerk allegedly stated that they have frequent enquiries about the shop units, about who owns them and what opportunities there are for use by local businesses. However, no evidence has been provided regarding these enquiries and I note that there was no written representation from the Town Council submitted with the appeal.
5. Whilst the alleged concerns of the Town Council are acknowledged, the Planning Officer's Report accepts that the premises have been vacant for a 'substantial length of time' but then makes assertions about the marketing of

the premises, without any evidence or objective analysis. I also note that no further evidence on this matter has been provided by the Council as part of their appeal statement. Therefore, the decision of the Council to object to the development on this basis was unreasonable behaviour.

6. In these circumstances, the applicant has been faced with the unnecessary expense of defending the appeal in response to the Council's accusations regarding the commercial interest in the units. An award against the Council in regard to the cost of commissioning Symonds and Sampson to update their marketing report is therefore justified.
7. The prior approval was also refused on the basis of harm to the character and sustainability of the Gillingham Conservation Area (CA). I have ultimately found in favour of the applicant on this particular matter. However, consideration of what forms part of the 'character and sustainability' of the Gillingham CA is a matter of planning judgment for the decision maker. I consider that it was not unreasonable for the Council to come to a different conclusion on this matter.
8. I also acknowledge that the change in officer recommendation would have been frustrating for the applicant. However, a draft recommendation is not binding and given that I have found that the consideration of the character and sustainability of a CA is a matter of planning judgement, the Council were not unreasonable in changing their opinion on this matter.

Conclusion

9. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described by the PPG, has been demonstrated. A partial award of costs, to cover the cost of commissioning Symonds and Sampson to update their marketing report to respond to the Council's accusations regarding the commercial interest in the units, is justified.

Costs Order

10. 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 Dorset Council shall pay Mr P Langdown of Langdown Commercial the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in commissioning Symonds and Sampson to update their marketing report to respond to the Council's accusations regarding the commercial interest in the units.
11. The applicant is now invited to submit to the 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.

Laura Cuthbert

INSPECTOR