



## Costs Decision

Site visit made on 13<sup>th</sup> June 2023

**by J Hills MRTPI**

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

**Decision date: 18 August 2023**

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### **Costs application in relation to Appeal Ref: APP/K1128/W/23/3315666 Dennings, Wallingford Road, Kingsbridge, Devon TQ7 1NF**

- 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 Dick Whittington of Dick Whittington Developments Ltd for a full award of costs against South Hams District Council.
  - The appeal was against the refusal of an application for planning permission for six new residential dwellings.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, 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. Paragraph 049 of the PPG says that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of such include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; failure to produce evidence to substantiate each reason for refusal on appeal; or the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. I note that the Council refused the application contrary to its officer's recommendation. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. The Council's statement assessed the proposed development within the context of the development plan policies and its supplementary planning guidance. Although I have not agreed with the Council, the evidence submitted relating to housing mix and affordability reasonably sought to substantiate the reason for refusal.

6. However, in respect of defining the housing mix set out in Policy DEV8 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (JLP), the Council's Supplementary Planning Document 2020 says the number of bedrooms will be used as a key metric. Despite this guidance, the Council's statement made the assertion that units smaller than the 4 bed properties should have formed part of the proposal when in fact, 4 of the 6 properties proposed, did just that. I therefore find that the Council made inaccurate assertions about the proposal's impact.
7. As set out in my main decision, this scheme and a previous appeal<sup>1</sup> are sufficiently closely related as they both include an identical housing mix. From the evidence before me, the Council did not previously object to the housing mix, and although not a matter expressly covered as a main issue within the previous appeal, the Inspector concluded there was a need for 4 bedroom and detached dwellings within Kingsbridge. Whilst I have determined the appeal linked to this costs application on its merits, for the above reasons, I find that the Council has persisted in objecting to a scheme that an Inspector has previously indicated to be acceptable. Therefore, unnecessary and wasted expense has been incurred by the applicant having to pay an agent to prepare and submit an appeal and prepare this application for costs.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

### **Costs Order**

9. 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 South Hams District Council shall pay to Mr Dick Whittington of Dick Whittington Developments Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to South Hams District 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.

*J Hills*

INSPECTOR

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<sup>1</sup> APP/K1128/W/21/3282469