



Costs Decision

Hearing held on 30 August 2023

Site visit made on 30 August 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2023

Costs application in relation to Appeal A Ref: APP/C3810/W/23/3322316 27 Clifton Road, Littlehampton, West Sussex BN17 5TE

- 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 Vitae Investments Limited for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for change of use (regularisation and part retrospective) to Sui Generis 10 room HMO and C3 Flat on the first floor.
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Decision

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

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. The applicant claims that the Council has acted unreasonably through not granting an extension of time on the planning application to firstly consider additional information to address the Environment Agency's 'holding' objection on flooding concerns, submitted before expiry of the application, and secondly to enable discussion on Council concerns relating to external amenity space provision. The applicant contends that the Council's handling of the case has resulted in unnecessary time, effort and cost. Furthermore, that the Council's approach is counter to Government guidance on encouraging dialogue to narrow issues and possibly avoid the need for the appeal to proceed. The cost claim is on procedural and substantive grounds.
4. The applicant submitted additional information in relation to both planning issues following notification by the Council of intent to refuse permission within the statutory determination period if the application is not withdrawn. The Council comment that there was insufficient time to reconsult the Environment Agency and assess any comments before the application's due date.
5. The applicant's cost claim and response to the Council's rebuttal predate the Environment Agency's submission in support of the Council's appeal statement. The Environment Agency's 'holding' objection at the application stage raised substantive concerns on flooding and was maintained through the appeal process to the hearing. The Council similarly maintained their objections to the outdoor amenity space provision.

6. It is unlikely therefore that one further round of dialogue during an extension of time would have overcome concerns raised and precluded the need for the appeal. The appeal process has enabled both main parties to submit additional information and for the hearing to examine this.
7. The Council has an obligation to balance the Government's expectation that it takes decisions on applications in a timely way, meeting targets, when possible, with the flexibility to allow an extension of time if it appears that concerns can be readily addressed to enable a development to proceed. The Council has addressed its approach to this balance in a Public Advice Note (July 2022) which affirms a commitment to decide applications based on originally submitted information if pre-application advice was not obtained or followed. The applicant had received advice from the Environment Agency after refusal of an earlier application relating to both floors of the premises. It was the opinion of the Council and Environment Agency that this advice had not been followed in the appeal application.
8. The applicant was not obliged to make a formal pre-application submission which could have resulted in delays. However, given the site's planning history and comments already received from the Environment Agency, a more detailed proposal could have been prepared prior to the appeal application's submission.
9. The applicant has also referred to the people in need of the 'particular type of housing' proposed. As the proposal is largely retrospective and the first floor of the premises occupied as intended, the application and appeal processes have not resulted in a delay in the accommodation being made available, though I acknowledge that the processes have resulted in uncertainty on obtaining planning permission.
10. Therefore, having regard to all relevant procedural and substantive issues, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Rory MacLeod

INSPECTOR