



Costs Decision

Site visit made on 6 February 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Costs application in relation to Appeal Ref: APP/Y1138/W/23/3327516 Sandhurst, Road from Eastington Cross to Orchard Cross, Lapford EX17 6QE

- 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 Mid Devon District Council for a full award of costs against Mr Kenneth Harrison.
 - The appeal was against the refusal of planning permission for the erection of 14 dwellings to include a footpath link.
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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 Council's case is that the appellant has acted unreasonably by submitting a speculative application that is clearly contrary to the development plan and submitting additional information in the form of a new viability assessment at the appeal stage. Additionally, the Council have raised that the appellant did not agree to pay for them to carry out their own independent viability assessment to verify the appellant's updated viability assessment.
4. Whilst I have found the proposal to be contrary to the development plan, I do not agree that the appellant submitted a speculative application. The appellant did not have professional representation during the application process, but has provided sufficient evidence at the appeal stage, based on planning arguments, to support their case for the development of the site. I am also satisfied that the subsequent application submitted for non-residential development on this site¹ does not demonstrate that the application was speculative.
5. The appellant provided an updated viability assessment as part of their appeal submission. However, they have confirmed that the original viability assessment was based on the affordable housing being discounted sales, whereas the updated assessment is based on the Council's currently expected affordable housing tenure mix of 60% affordable rent and 40% intermediate rent, as outlined in the Council's 'Meeting Housing Needs' Supplementary Planning Document (SPD) of November 2023. Whilst it is unfortunate that the updated assessment was provided at the appeal stage, the Council's position

¹ Mid Devon District Council application reference 23/01768/FULL

has changed during the appeal process, and I note the SPD was not published until well after planning permission had been refused. I do not consider this to be unreasonable behaviour in this case.

6. Despite it being the Council's procedure to request that the commissioning of their own independent viability assessment be covered by the appellant, it would not be unreasonable for the appellant to refuse to cover these costs. Particularly as the viability assessment originally submitted by the appellant was actually favourable to the Council's case that the proposed development is not policy compliant. Moreover, it is my understanding that the Council did not commission their own independent viability assessment and therefore there was no unnecessary or wasted expense incurred.
7. Having regard to all of the above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Reeves

INSPECTOR