



Costs Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Costs application in relation to Appeal Ref: APP/K1128/W/24/3349941 Brewery Quay, Island Street, Salcombe TQ8 8DP

- 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 A Manning-Smith of Valentine London Ltd for a full award of costs against South Hams District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing buildings, retention of southern boundary wall and quay, erection of building containing commercial units and 4no. Principal Residence residential units and associated car parking without complying with a condition attached to planning permission Ref 0434/20/FUL.
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Decision

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

The submissions for Mr A Manning-Smith

2. The costs application was made verbally at the hearing where it was said that:-

"There has been no indication of direction from this authority as to what criteria or parameters should be used to establish that he's not used his best endeavours to dispose of the property with the condition attached. He is in a unique position of having expended his resources prior to the policy being adopted in the local plan. He should be the one who is entitled to costs as a cross application...."

Their behaviour dealing with the matter slowly and not giving any indication what the parameters are for determining whether sufficient evidence is available to show proper marketing at a proper discounted price; and in particular, giving you no indication whatsoever what might happen in the fallback position should you refuse the consent, leaving the site without beneficial use and adding nothing whatsoever to the housing problem of this authority.

Indeed, negating the government policy in the approved NPPF and in the emerging NPPF. All these actions are counter-productive to every government's standing of trying to increase proper proportional housing supply, including affordable housing. That attitude is unreasonable and does not accord with the costs circular."

The response by the Council

3. The Council provided a verbal rebuttal at the hearing where it was said that:-

"The appellant's costs claim appears to have 2 main grounds. Firstly, that the Council was slow to react to the application and secondly that there was a lack of guidance from the Council in respect of what could be done at the site.

Firstly, the application was determined in a timely manner. A modest 5 day extension of time was agreed with the appellant and we would not consider this to be slow to react. In terms of the second point and lack of guidance, the Council offers a pre-application advice service which the appellant did not engage with. It is not for the Council to tell an applicant what to do with a site.

The Council are required to determine an application as submitted in accordance with the Council's adopted planning customer charter. The decision included a robust assessment of the proposal with a justification to refuse planning permission based on the adopted development plan which has statutory primacy in decision making.

Finally, we would refute the allegation that by refusing planning permission, that the Council is preventing housing from being brought forward, and it is unclear how permitting 4 flats to be released for holiday accommodation contributes to these aims either. To summarise, the Council has explained its position, justified the decision, and this is not unreasonable behaviour".

Reasons

4. 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. The PPG also says that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. An example of unreasonable behaviour which may result in an award of costs is where there has been a lack of co-operation with the other party or parties.
5. While it is claimed that the Council dealt with the application slowly, costs applications must relate to the appeal process. Even so, the evidence shows that Council dealt with the application in a timely manner with the inclusion of an agreed extension of time. For these reasons, no lack of co-operation or unreasonable behaviour has been shown.
6. The frustrations of the applicant are acknowledged in respect of how the property could be sold with the condition in place. However, the Council highlight that there was no pre-application engagement, and that the application was determined in accordance with their customer charter. Again, this occurred during the application rather than at appeal.
7. Additionally, I do not find that it would have been incumbent on the Council to indicate to the applicant what might happen in the event an application is refused. The Council set out its reasons clearly within its submissions and

determined the scheme in accordance with the development plan as a whole. This included why it would not have been appropriate to seek an affordable housing contribution for this scheme, even if one was provided. It has not behaved unreasonably.

Conclusion

8. For the reasons given, I find no unreasonable behaviour or any wasted expense in the appeal process.

J Hills

INSPECTOR