



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 South Hams District Council for a full award of costs against Mr A Manning-Smith of Valentine London Ltd.
 - 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 by the Council

2. The costs application was made in writing before the hearing. In summary, this sets out that the appellant had no reasonable prospect of succeeding at appeal on 2 grounds. Essentially, it is claimed that the appeal proposal conflicts with the adopted neighbourhood development plan policy and that there are no material planning considerations that would outweigh this fundamental policy conflict.

The response for Mr A Manning-Smith

3. The appellant provided a rebuttal to the Council in writing before the hearing. This explains that the appellant acted reasonably in all respects, providing evidence of unsuccessful marketing. It is claimed that this, together with an assessment of the development plan as a whole and the National Planning Policy Framework, is considered to outweigh the requirements of Policy SALC H3 of the Salcombe Neighbourhood Development Plan (NP).
4. Additionally, the costs application was added to at the hearing where it was said that:-

"In accordance with the costs circular, there is no case to answer. South Hams District Council's arguments do not fall within any of the parameters and criteria set down in that circular. The behaviour of the applicant under no circumstances can be considered unreasonable in accordance with the circular."

We have developed a perfectly straightforward argument for a material departure from the development plan; and whether or not the Council agree with the argument, it can not be deemed to be unreasonable. The applicant has given cogent evidence of the attempts to sell the 4 units over a long period of time, reducing the prices as he went along.

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.

In my entire experience I would submit to you this is the most inappropriate application for costs that I have seen in my 57 years' experience..."

Reasons

5. 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.
6. The PPG says that an *appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when: the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.*
7. The appellant agreed at the hearing that the proposal represented a material departure from the development plan. However, they brought forward a case of other material considerations that centred around a marketing campaign. The evidence showed that this took place over a number of years. At the hearing, the appellant added more detail as to the specific issues surrounding the difficulties they had experienced in attempting to sell. Furthermore, it was noted that a number of open house events and price reductions had been carried out.
8. Although I have ultimately not agreed that material considerations sufficiently outweigh the harm to the conflict with the development plan, the supporting evidence is not inadequate as described in the PPG.
9. The Council's concerns surrounding the appellant's representations on the status of the NP are noted. However, in the Statement of Common Ground it has been set out that the NP has been through examination, successful referendum, and adopted by the Council. Furthermore, it is common ground that it forms part of the development plan and should be afforded full weight in the decision making process. In this respect, there is no case for unreasonable behaviour.

Conclusion

10. For the reasons given, the appeal was not bound to fail. Consequently, I find no unreasonable behaviour or any wasted expense in the appeal process.

J Hills

INSPECTOR