



Costs Decision

Inquiry held on 3 to 6 December 2024 and also on 16 December 2024

Site visit made on 6 December 2024

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2025

Costs application in relation to Appeal Ref: APP/K1128/W/24/3347514

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Baker Estates Limited for award of costs against South Hams District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of existing buildings and a residential redevelopment of up to 40 dwellings, including the formation of access and associated works.

Land at Pennpark, Modbury, Devon PL21 0TB

Decision

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

The submissions for the applicant, Baker Estates Limited.

2. The costs application was submitted in writing. The reasons given by the costs applicant (i.e. the appellant) for the costs application are summarised as follows:
 - That the development as proposed should have been permitted without delay
 - That the site is allocated in the South West Devon Joint Local plan 2012 - 2033 (the JLP) and in the allocation decision it was considered that the site had a safe and suitable access
 - That the pedestrian access via the A379 was safe
 - That the proposed off-site highways works would bring a benefit for all existing pedestrians in the area of the site
 - That only irrational people would use the unsafe route, keeping to the A379 where there was no footway
 - By granting planning permission for a dwelling for vets at the New Mills Industrial Estate demonstrated an inconsistent approach by the Council
 - That considering the possible use of Drovers Way as an alternative was not reasonable or necessary
 - That the viability evidence submitted by the applicant/appellant was very robust, though in contrast the Council viability evidence was unreasonable on many key issues

3. The applicant stated that for the reasons given the Council has acted unreasonably, and this has resulted in the Appellant incurring additional costs associated with the appeal which the applicant believes should have been avoided altogether.
4. I have had regard to the Council's response in reaching my decision.

Reasons

Pedestrian Access Issue

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. It is understood that the applicant believes that the planning application should have been granted planning permission, therefore avoiding an appeal, but as is clear from my appeal Decision, this was not a view I shared as this appeal was dismissed.
7. The site was allocated in the JLP for housing. I would agree that given that the site is allocated there should have been more of an assessment of pedestrian access at the allocation stage. However, as I concluded in the appeal Decision, it was correct for the Council to undertake a full assessment of this issue, against the full suite of relevant JLP and Modbury Neighbourhood Plan (NP) policies, at the Planning Application stage.
8. The applicant did propose the pedestrian route which would have avoided the section of the A379 which had no footpath. It was agreed between the parties that if pedestrians took this route, with the proposed enhancements, then it would be a safe route. Furthermore, the enhancements for pedestrians to the A379 route were noted as benefits that the proposed scheme would deliver. However, the more pertinent point was whether future residents would take the shorter and more direct route by keeping on the A379, which was not a safe option. On this matter, after considering all the evidence including safety audits and accident data, I concluded in the appeal Decision that Route 1 (pedestrians keeping to the A379) would be a desire line route that is likely to be used by future occupants of the proposed housing, or visitors to these new dwellings.
9. It may be that walking the A379 route, where there is no footpath, would be irrational and illogical, but people do make unwise decisions as I explained more in the appeal Decision. Significant and severe consequences could therefore follow due to accidents on this stretch of the A379, including in the period where new residents are getting accustomed with the area.
10. As set out in the appeal Decision, the planning permission granted by the Council for a 3 bedroom dwelling (log cabin) to accommodate graduate vets/nurses (1505/23/FUL) was considered. However, the provision of a single house is very different to the proposal for up to 40 dwellings, as is the case with the appeal proposals.
11. Regarding the matter of Drovers Way, it was not unreasonable for the Council to raise the point that it exists or that the Council believed this could be used in the future for a pedestrian link between the site and Modbury centre. The evidence

from the Council did not demonstrate to me that there was an obsession with Drovers Way. However, it is not certain whether it is possible for Drovers Way could become a formal public path, as the applicant had submitted with its evidence. Ultimately, Drovers Way was not part of the allocation and more pertinently was not part of the planning proposals for this scheme. Furthermore, the existence of Drovers Lane did not alter my conclusion that the appeal proposal was unacceptable due to the highway pedestrian reasons with the use of the A379.

12. Overall, as can be read in the Appeal Decision in more detail than included within this Costs Decision, I concluded that the Council had used their professional judgement and had a strong case on the matter of pedestrian safety which led to the dismissal of the appeal. This was not a matter that could be addressed by condition, as there was no clearly effective way to deter future residents from walking along the A379 due to its directness and shorter distance than the alternatives. As such, the Council did not behave unreasonably on this issue.

Viability/Affordable Housing Issue

13. On the matter of affordable housing provision and the viability of this, the applicant did indeed submit detailed information in its evidence. Some of this was agreed by the Council. Nevertheless, where there was disagreement, I agreed more often with the arguments put forward by the Council. For the reasons set out in detail with my appeal Decision, I concluded that the appellant's evidence is not sufficiently robust, and I have disagreed with the applicant on the matters of Benchmark Land Value, Gross Development Value and on abnormal costs. There were also some details which I did not agree with the Council, but overall I regarded the Council evidence on viability as more robust. As such, I do not agree that the Council evidence on many of these key issues was unreasonable.

Conclusions

14. Therefore, considering all the above and the detailed text of the appeal Decision, unreasonable behaviour by the Council resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Mr S Rennie

INSPECTOR