



Costs Decision

Hearing opened on 18 March 2025 and resumed on 3 June 2025

Site visit made on 3 June 2025

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2025

Costs application in relation to Appeal Ref: APP/K1128/W/24/3355774

Brewery Quay, Island Street, Salcombe, Devon 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 or partial award of costs against Mr Andrew Manning-Smith of Valentine London Ltd.
 - The appeal was against the refusal of planning permission for a proposal described as 'Removal of Condition 1 (restriction of occupancy to a principal home) of planning application reference 0434/20/FUL to allow for unrestricted residential occupancy (C3) of the 4 no. units.'
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

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.

Procedural Matters

3. An award may be made against an appellant for behaviour in relation to procedural matters¹. These include a lack of co-operation with the other party, failure to adhere to deadlines, and not completing a timely Statement of Common Ground. It may also be awarded where fresh and substantial evidence is introduced at a late stage, necessitating an adjournment, and where new grounds of appeal or issues are raised, prolonging the proceedings.
4. The production of the Statement of Common Ground took time, but was ultimately agreed between the parties before the Hearing opened. This did not amount to unreasonable behaviour by the appellant. However, when making the appeal, the appellant did not provide their Statement of Case to the Council within a timely manner. The appellant then sought to provide a new marketing report, and was unable to meet the deadlines set for this. This amounts to unreasonable behaviour.
5. The marketing report was fresh and substantial evidence. The late submission of it ultimately resulted in the date for the Hearing being postponed from February until March 2025. This therefore delayed proceedings and resulted in the Council

¹ PPG paragraph 052, reference ID: 16-052-20140306

- undertaking additional work (e.g. amending a drafted statement and rearranging the event), and thus extra expense, that would not otherwise have arisen.
6. Moreover, on 18 March, when the Hearing did open, the appellant introduced new legal submissions, as well as further evidence, without any advanced warning. The appellant was entitled to make those arguments, and having them in writing was undoubtedly helpful. However, as a Hearing consisting of a round-table discussion, led by my questioning, there is no entitlement or expectation for opening or closing submissions.
 7. The legal submissions in particular amounted to further fresh and substantial evidence, and included grounds and issues not previously raised by the appellant. I see no reason why these submissions could not have been made at an earlier stage of the appeal, giving the other parties time to respond, rather than submitting this evidence on the morning of the Hearing itself.
 8. In order for the Council, myself and others to be able to properly consider and question this information, plainly an adjournment was required. This therefore prolonged proceedings further and so also amounted to unreasonable behaviour. It caused the Council to incur wasted expense in the appeal process, for example in attending the abortive Hearing on 18 March, re-arranging the event again, and having to further add to its submissions. Consequently, a procedural award of costs against the appellant is justified.

Substantive Grounds

9. A costs award may also be made against an appellant on substantive grounds². These include where the proposal is clearly not in accordance with the Development Plan, and no other material considerations (such as national planning policy) are advanced to indicate a decision otherwise, or with inadequate supporting evidence. It also includes where a previous appeal decision for a similar proposal has decided that it was unacceptable, and where circumstances have not materially changed.
10. The appeal application was in essence identical to that considered by a then-recent appeal decision at the site³. Both applications and appeals sought to ensure that the flats were no longer restricted in occupation to principal residency. However, the previous appeal related to removal of a condition, and so was limited in its scope, in contrast to the fresh albeit retrospective planning application before me.
11. Moreover, the previous Inspector did not have the same extent of evidence before him, for example the marketing and viability submissions, that were before me. The previous Inspector concluded that removal of the condition would conflict with Neighbourhood Plan Policy SALC H3, and that the weight given to the other considerations did not outweigh the identified harm. However, this decision was issued before the publication of the December 2024 version of the Framework, and the updated Local Housing Need figures, thus changing the planning policy position.
12. I have not ultimately been persuaded that the flats should be unrestricted, but the circumstances above do represent a material change since the previous appeal

² PPG paragraph 053, reference ID: 16-053-20140306

³ APP/K1128/W/24/3349941

decision. Adequate supporting evidence was provided by the appellant to make a respectable case. Consequently, a substantive award of costs is not justified.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred, within the terms of the PPG, but only in respect of the procedural matters identified above. On this basis, a partial award of costs is warranted.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Andrew Manning-Smith of Valentine London Ltd shall pay to South Hams District Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred with regard to attending the event on the day of the adjournment, and from extra work and additional expense caused by the late submissions of the appellant and the prolonging of proceedings.
15. South Hams District Council is now invited to submit to Mr Andrew Manning-Smith of Valentine London Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.

O Marigold

INSPECTOR