
Costs Decision

Hearing held on 14 June 2016

Site visit made on 14 June 2016

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 October 2016

Costs application in relation to Appeal Ref: APP/K1128/W/16/3142708 Land at St Ann's Chapel, Bigbury, Devon

- 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 C and S Rodger, R and E Ogilvie-Smals, C and L Hall and J Davies for a full award of costs against South Hams District Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for residential development of circa 8 dwellings along with point of access, open space and associated infrastructure.
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Decision

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

The Submissions for C and S Rodger, R and E Ogilvie-Smals, C and L Hall and J Davies

2. The applicants submit that the Council made its decision to refuse the application on highway safety grounds without having due regard to the Road Safety Audit submitted with the planning application and on the basis of a superseded plan.
 3. The appeal statement submitted by the Highway Authority (HA) makes reference to drawing number 4060/003 Rev A, when the plan submitted for consideration was drawing number 4060/001 Rev D. During the course of the appeal, the Council withdrew its second reason for refusal (relating to pedestrian visibility) and as such this should not have comprised a reason for refusal.
 4. Furthermore, the two highway reasons for refusal were based on vague, generalised and inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis.
 5. The reasons for objection given in the HA's written statement were not disclosed during the planning process and the HA used misleading data in respect of traffic flows on the C252. No reference was made to the applicants' report by PCL Transport which calculated that the pedestrian trips per day would be 16.
 6. Concern was also expressed that the Council had not determined similar cases in a consistent manner and reference was made to the 3 terraced dwellings on the opposite side of the C road to the appeal site, which have pedestrian access onto the C252. The HA did not object to this planning application.
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7. The applicants consider that the Council acted unreasonably and this has resulted in wasted expense. The Council prevented development which clearly should have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

The Response by South Hams District Council

8. The Council submit that it took account of the applicants' Road Safety Audit in its consideration of the planning application. It acknowledged that reason for refusal No 2 should not have been included in its decision notice. However, this was withdrawn early on in the appeal process and the applicants would not have been put to wasted or unnecessary expense in this regard.
9. In respect of the first reason for refusal, the HA, in its evidence made reference to Manual for Streets and the required visibility splays. The evidence submitted was not vague, generalised or based on inaccurate assertions.
10. During the course of the application, the applicants were made fully aware of the HA concerns, hence the submission of numerous amended plans to try and address those concerns that were raised.
11. The HA used TRICS data for the C road because it considered that the applicants' submitted evidence was not conclusive. The C road serves a holiday park and another village. It was not unreasonable to use such information in an appeal situation to support the Council's case, particularly given the absence of this matter being addressed by the applicants.
12. The application for the houses opposite the appeal site on the C road was materially different to the appeal scheme, being the redevelopment of an existing site that generated a number of pedestrian movements, as opposed to an undeveloped site. Furthermore, the properties also have rear pedestrian access which the occupiers can use to access the facilities in the village.
13. The Council remains concerned that the development is unacceptable because of the increase in pedestrian traffic that the scheme would generate on a highway lacking footways and with inadequate visibility at the junction of the C252 and the B3392. The appeal was therefore necessary.

Reasons

14. 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.
15. The PPG provides examples of circumstances which may lead to an award of costs. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
16. Examples of unreasonable behaviour which may result in a procedural award of costs include withdrawal of any reason for refusal and deliberately concealing relevant evidence at planning application stage or at subsequent appeal.
17. Local planning authorities are at risk of a substantive award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal, making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and not determining similar cases in a consistent manner.
18. The Council acknowledge that its second reason for refusal should not have been included in its decision. Whilst it may have withdrawn this refusal reason early on in the appeal process, the applicants had to address this matter within their evidence and as such they were put to unnecessary and wasted expense in this regard. I therefore find that the Council acted unreasonably in including reason for refusal No 2 in its Decision Notice which resulted in the applicants being put to unnecessary and wasted expense.
 19. However in respect of the Council's first refusal reason, I am satisfied that evidence was produced to substantiate this reason for refusal, including reference to development plan policy, likely traffic volumes and speeds. Reference was also made to the required visibility splays at the junction of the C road with the B road, and details were provided demonstrating the visibility splays that could be achieved. Although specific reference was not made to the applicants' highway reports, I remain unconvinced that they were not considered by the Council and HA in the determination of the application.
 20. I note the applicants' frustration that the HA's evidence made reference to the superseded plan in respect of visibility at the proposed pedestrian access, and to highway works shown on this plan. However, the evidence also made reference to the plan determined by the Council (4060/001 rev D), and referenced in its decision notice. I am not convinced that the applicants were put to unnecessary expense as a result of the reference to the superseded plan.
 21. I am satisfied that the planning application for the 3 houses adjoining the appeal site was materially different to the case before me, being the redevelopment of an existing site, as opposed to agricultural land. The Council in determining this application took into account the existing number of pedestrian and vehicular trips associated with the previous use. This was entirely reasonable. The Council has therefore not behaved unreasonably in determining the appeal proposal as it did, because it was not directly comparable to the adjoining site.
 22. On the basis of the evidence before me it appears that the Council acted in a reasonable manner with the applicants, considering various options to address its concerns relating to highway safety at the Pickwick Inn junction.
 23. I therefore find that the work undertaken by the applicants in respect of the proposal's impact on highway safety at the junction of the C road with the B road was a necessary part of the appeal process. Furthermore, the expense in preparing the Section 106 Agreement was also a necessary part of the appeal process to address the Council's third reason for refusal. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in respect of these matters.

24. However, in light of my findings above in respect of reason for refusal 2, I find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated and that a partial award of costs is justified.

Costs Order

25. 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 South Hams District Council shall pay to C and S Rodger, R and E Ogilvie-Smals, C and L Hall and J Davies, the costs of the appeal proceedings limited to those costs incurred in respect of reason for refusal 2 relating to visibility at the proposed pedestrian access; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 3 of this letter.

26. The applicant is now invited to submit to South Hams District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R C Kirby

INSPECTOR