



Costs Decision

Site visit made on 10 February 2020

by **J Ayres BA Hons, Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Costs application in relation to Appeal Ref: W/4000456 The Cottage, Shripney Road, Bognor Regis PO22 9PA

- 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 Castle Property Developments for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for outline planning application with all matters reserved except access for up to 31 No. houses and flats with car parking, landscaping and associated infrastructure and access off Shripney Road (A29), all following the demolition of the existing dwelling and outbuildings at The Cottage, Shripney Road, Bognor Regis PO22 9PA.
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Decision

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

Reasons

2. The appellant submits that the council has acted unreasonably in that it has gone against the advice of its professional officers without good reason to do so and then failed to substantiate its objection. The appellant also asserts that the council took account of factors beyond the scope of the application before them, namely that they refused the application on grounds relating to reserved matters, when only the reserved matter of access was before them for determination.
3. Para 049 (Ref ID 16-049-20140306) of the National Planning Policy Guidance (the PPG) sets out a number of examples where a Local Planning Authority are at risk of an award of costs if they behave unreasonably with respect to the substance. These include 'preventing or delaying development which should be clearly permitted, having regard to its accordance with the development plan, national policy and any other material considerations', and 'failure to produce evidence to substantiate each reason for refusal on appeal.'
4. While the council is not duty bound to follow the advice of its professional officers, if a different decision is reached the council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. In this case the matter before the council related to access, all other matters were reserved for determination at a later date. The appeal site is outside of the built up area boundary, and therefore the scheme would conflict with policies in the local plan directing the location of development. The proposed

- level of parking would also fail to comply with the Neighbourhood Development Plan, however it would comply with the Local Plan which advises that development will be supported where it incorporates appropriate levels of parking in line with West Sussex County Council guidance on parking provision. Furthermore, parking could be addressed at reserved matters stage when determining layout.
6. The advice of officers was that the access (the matter to be considered) would be suitable, and that there were material considerations weighing favour of the scheme such to conclude that permission should be granted.
 7. The application was not refused for reasons relating to access, or its location outside of the Built Up Area Boundary. The reason for refusal focused on a lack of amenity space, density and insufficient car parking.
 8. The plans showing a layout of the site were identifying as being for illustrative purposes only. It is not unusual for a scheme to identify how the number of units could be accommodated and indeed this is necessary to understand whether the site would be able to provide the level of housing (up to a total of 31). However, the matters relating to the final layout of the scheme, and the matters associated with that layout such as amenity space, would be determined through the submission of an application relating directly to those reserved matters.
 9. Whilst I accept that the council were entitled to use the plans for illustrative purposes, the plans were clearly marked and referred to as such and should not have been relied upon for the purpose of determining matters that were not before them. To my mind in this respect the council went beyond what it was able to do, and acted unreasonably in this regard.
 10. The Council's evidence explores the ability of the site to provide the level of housing proposed and asserts that this could not be done on the basis of the indicative plans and the number of units proposed. However, the Council acknowledges that as part of the application process the description was amended to read 'up to 31 No. houses and flats'. Therefore if appropriate it is possible to reduce the number of units to seek to secure compliance with the development plan in respect of those reserved matters (appearance, landscaping, layout, and scale) at the appropriate stage. I find that assertions about appearance, landscaping, layout, and scale, which were largely made on the basis of plans only to be used for illustrative purposes leads me to conclude that the council has not substantiated its reasons for refusal with any clear evidence.
 11. In the planning judgement it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposal should reasonable have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
 12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

13. 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 Arun District Council shall pay to Castle Property Developments, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Arun 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.

J Ayres

INSPECTOR