The Planning Inspectorate

Costs Decision

Hearing held on 1 & 2 November 2023

Site visits made on 24 October & 7 November 2023

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Costs application in relation to Appeal B Ref: APP/Y3805/W/23/3320322
Land at former 5 Brighton Road, Shoreham by Sea, BN43 6RN

- 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 Cayuga 011 LLP for a full award of costs against Adur District Council.
- The appeal was against the refusal of planning permission for a mixed-use re-development comprised of townhouses, mixed-use apartment block, riverside walk, landscaping and parking.

Decision

1. The application for an award of costs is 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.

3. The appellant submitted a written application for a full award of costs in respect of the appeal proceedings for Appeal B on the basis that the Council acted unreasonably in refusing this second application. The Council responded to this application orally at the Hearing and the appellant had an opportunity to provide final comments. The Council's oral submissions were presented in written form immediately after the close of proceedings.

4. The Hearing considered two appeals relating to proposals for a mixed-use development on the appeal site, both refused by the Council contrary to the officer's recommendation. Following refusal of the first scheme (Appeal A), the appellant made amendments to the design of the scheme and made an improved offer in respect of affordable housing provision. However, the Members refused the second scheme (Appeal B), again contrary to officer advice, for exactly the same reasons that they had refused Appeal A. The appellant considered the decision perverse, particularly as the Council subsequently withdrew its reference to conflict with Policy 21 of the Adur Local Plan (ALP) in its first reason for refusal.

5. The appellant also criticised the Council's conduct during the appeal in relation to the planning obligations. The appellant had always indicated a willingness to make appropriate contributions to local infrastructure in accordance with relevant law and policy. There was therefore an expectation that the Council's second reason for refusal could be addressed before the Hearing. However, a

lack of effective engagement with the Council to progress the obligations meant that the Unilateral Undertakings were not executed until after it had concluded.

6. My understanding is that Members were concerned with two particular issues in relation to the schemes proposed for the appeal site. Firstly, the height of the apartment block and secondly, the contribution the development would make towards the delivery of affordable housing.

7. The Council's reason for refusal suggested that there was conflict with the development plan's approach to affordable housing. Policy 21 set a target for sites of more than 11 dwellings to provide 30% as affordable homes (including social rented, affordable rented and intermediate housing). However, the policy also states that where developers are unable to meet this target, the Council will seek to negotiate an alternative provision, usually in the form of a financial contribution, subject to robust viability evidence.

8. It was clear from the analysis undertaken for the earlier scheme (Appeal A) that the high development costs associated with the appeal site, coupled with the infrastructure works required to ensure compliance with other elements of the development plan, would limit the resources available to provide affordable housing. This was set out in the officer's report on that scheme and explained why officers had only been able to negotiate a contribution towards off-site provision.

9. From my understanding of the viability evidence, the only means of significantly increasing the provision of affordable housing on the site, and possibly achieving the target of 30%, would be to increase the number of proposed dwellings. However, this in turn would almost certainly have increased the height of the buildings, the other issue which was contentious. On the other hand, reducing the height of the apartment block to protect the silhouette of the lighthouse would mean fewer dwellings on the site. This would further reduce the viability of the scheme, making it even less likely that the development could make a significant or increased contribution to the provision of affordable housing.

10. The amended scheme, Appeal B, sought to address Members concerns on both issues. Whilst the height of the apartment block was not changed, efforts were made to reduce its impact. Instead of a financial contribution, five intermediate housing units would be provided on site. These, and other changes, were set out in the officer's report. The complexity and expense of developing this small site was always going to make it difficult for all the Members' aspirations to be met. However, in rejecting Appeal B for identical reasons as those for Appeal A it seems that Members failed to fully grasp the need to balance these competing issues in a rational and logical way. This was particularly important as the site is an integral part of the regeneration of the Western Harbour Arm of Shoreham Harbour, and fundamental to the delivery of the Council's spatial strategy.

11. Whilst Members are not obliged to accept the recommendations of their officers, they must be able to demonstrate reasonable planning grounds for taking a different view and support their decision with relevant evidence on appeal. The Council appointed an independent consultant to do so. He provided an appeal statement and represented the views of Members at the Hearing to justify their decision as far as he was able.

12. However, no additional heritage evidence was provided, justified on the basis that it was common ground that there would be less than substantial harm to the setting of the lighthouse. Instead, the Council's planning consultant focussed on the weight that should be given to the public benefits of affordable housing in the heritage balance. Whilst this is a matter of planning judgement, I remained unclear as to where the priorities of Members lay in reaching their assessment. From the reason for refusal, they appeared to be unhappy with both the height of the apartment block and the affordable housing offer. However, they had been presented with substantive evidence to suggest that the scheme was not sufficiently viable to deliver more affordable housing without causing more harm to the setting of the lighthouse.

13. In the absence of Members at the Hearing I was not able to hear their concerns for myself. This could have included gaining greater understanding of local people's views about the importance of the setting of the lighthouse and their concerns about the acute shortage of affordable housing. This left me with little confidence that their decision had taken full account of all the important issues in this case, particularly bearing in mind the site's allocation for development and its role in delivery a range of other public benefits.

14. Having amended the scheme and secured the support of the Council's professional officers, the appellant had a reasonable expectation that the scheme would be approved. However, having seen how Members made their decision, the appellant felt their only option was to pursue the appeal. In doing so, costs have been incurred preparing for the Hearing, attending the event, making arrangements for the site visit and responding to my queries and questions throughout the appeal process. The appellant has also experienced difficulties engaging with the Council in respect of the planning obligations which caused frustration and has delayed the issue of the appeal decision. This is in turn has delayed the implementation of a scheme which will deliver new homes and significant public benefits.

15. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and an award of costs is justified.

Costs Order

16. 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 Adur District Council shall pay to Cayuga 011 LLP, 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.

17. The applicant is now invited to submit to Adur 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.

Sheila Holden

INSPECTOR