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Your Ref: HPK/2012/0401

Our Ref: APP/H1033/A/12/2187544
APP/H1033/E/12/2187545

Date: 27 June 2013

Dear Madam

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 & 322
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 – SECTION 89: LAND AT 33 ST JOHN'S ROAD, BUXTON, DERBYSHIRE: APPEAL BY SYCAMORE DEVELOPMENTS: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Inspector's decision of 22 April 2013. This dismissed the appeal by Sycamore Developments Ltd against the decision of High Peak Borough Council to refuse planning permission and listed building and conservation area consent for demolition of the existing dwelling and garage and erection of a two-storey building, with two storey wings, comprising six apartments, together with associated car parking, landscaping and ancillary works on land described above.

2. This letter deals with your Council's application for an award of costs against the appellants made in your correspondence of 5 February 2013. IG Land & Planning replied on behalf of the appellants in correspondence of 2 May 2013. As these representations have been made available to the parties it is not proposed to summarise them in detail.

Procedural matters

3. For the avoidance of doubt, while the Inspector's appeal decision concerns 4 linked appeals, the costs application is solely in relation to the appeal references shown above.

Summary of decision

4. The formal decision is out in paragraph 12 below. The costs application fails and no award of costs is being made.

POSITIVE ABOUT DISABLED PEOPLE

Basis for dealing with the costs application

5. In planning and enforcement appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense. Published policy guidance is in CLG Circular 3/2009 (referred to below as "the Costs Circular"). The application for costs has been considered in the light of this guidance, the Inspector's appeal decision, the appeal papers and all the relevant circumstances.

Reasons for the decision

6. All the available evidence in this case has been carefully considered. The decisive issue is whether or not the appellant acted unreasonably by submitting an appeal that plainly had no reasonable prospect of succeeding. The guidance in paragraph B13 of the Costs Circular is particularly relevant in this case.

Conclusions

7. Paragraph B13 gives as an example of where an appellant is at risk of an award being made against them, if the appeal follows a recent appeal decision in respect of the same, or very similar, development on the same, or substantially the same, site where the Secretary of State or Inspector has decided that the proposal is unacceptable and circumstances have not materially changed in the intervening period.

8. In this case, the Council's application for costs appears to focus on the appellants' behaviour in general, rather than specifically in relation to these appeals. The Council contend that the appellants have abused the planning process by submitting an unnecessarily high number of applications/appeals. However, it should be noted that the Secretary of State does not have the power to consider the issue of the accumulation of applications or appeals submitted. He can only consider whether or not the appellants acted unreasonably by submitting these latest appeals in view of the decision on the most recent previous appeals[1] of 3 January 2012, causing the Council to incur wasted or unnecessary costs as a result. With that in mind, it is noted that the proposals in the previous appeals concerned the erection of a two and a half storey building comprising 7 apartments, while the current appeals involved the erection of a two storey building comprising 6 apartments. The Secretary of State therefore considers the latest proposals to be materially different from the ones put forward in the previous appeals. While the Secretary of State notes the Inspector's somewhat critical comments in paragraphs 16 and 17 of her decision in relation to the appellants efforts to address certain aspects of the previous appeal decisions, he is satisfied from the evidence that overall the appellants have made a sufficient attempt to overcome the previous Inspector's objections.

9. In any event, under section 70A of the Planning and Compulsory Purchase Act 2004 and section 81A of the Planning (Listed Buildings and Conservation Areas) Act 1990, Council's have the discretionary power to decline to determine an application where the Secretary of State has dismissed an appeal against the refusal of a similar application within the last two years. That being the case, it is not clear why the Council did not refuse to accept the appeal applications for consideration if they felt they did not significantly differ from the previous ones. It is reasonable to assume therefore that as the Council accepted the applications for consideration, they were satisfied that they were materially different proposals. In their response to the costs application the appellants' agents refer to the differences in the appeal applications to that of the previous appeals and how they sought to address the concerns of the previous

[1] APP/H1033/A/11/2160773 & APP/H1033/E/11/2160775

Inspector. However, it is noted that the Council have not taken the opportunity to refute this. In view of the above, the Secretary of State is not satisfied that the appellants acted unreasonably by submitting appeals that plainly had no reasonable prospect of succeeding.

10. It is noted that the Council also claim that they incurred expense as a result of the appellants requesting that the appeals be dealt with concurrently. However, there is no evidence to indicate that the appellants made such a request.

11. The overall conclusion reached therefore is that the Secretary of State does not consider that the appellants acted unreasonably in the appeal process causing the Council to incur any wasted or unnecessary expense in the appeal process. An award of costs will therefore not be made.

FORMAL DECISION

12. For the reasons given above, the Secretary of State has decided that the appellants have not acted unreasonably in the appeal process causing the Council to incur wasted or unnecessary expense. An award of costs against the appellants is therefore not justified in the particular circumstances.

13. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for a judicial review. This must be done promptly.

14. A copy of this letter has been sent to Mr Ian Gidley of IG Land & Planning.

Yours faithfully

K McEntee

KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf