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## Costs Decision

Hearing held on 18 December 2013

Site visit made on 18 December 2013

**by David Nicholson RIBA IHBC**

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

**Decision date: 16 January 2014**

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**Costs application in relation to Appeals Ref: APP/V2255/A/13/2202894 & APP/V2255/E/13/2202924**  
**Building No.1, Standard Quay, Abbey Road, Faversham, Kent**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6; the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3; and the Local Government Act 1972, section 250(5).
  - The application is made by Quayside Properties Ltd. for a full award of costs against Swale Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission and listed building consent for single storey rear extension + internal alterations to Grade II listed warehouse building with change of use to restaurant + art gallery/function room.
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### Decision

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

### Reasons

2. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. The application and response were both submitted in writing.

#### *Listed building/conservation area*

3. My findings on the main issues for both appeals are that harm would be caused to the character of both the listed building and the conservation area. This was based on the evidence produced by the Council and by its conservation officer in particular. On this issue the Council was not unreasonable.

#### *Vitality and viability*

4. As set out in my Decision, the Council produced no material evidence to support this reason for refusal. It acknowledged that the town centre is not in decline and the policies it referred to have little relevance to the proposals. This was unreasonable. The appellant was obliged to address this reason for refusal in its planning appeal documents and so was caused unnecessary expense as a result of the Council's behaviour.

#### *Maritime history and maritime related activities*

5. Beyond reference to public opinion, the Council produced no material evidence other than, in its statement, that its concern was with regard to the

significance of the heritage assets, matters I dealt with under those issues. However, the reason for refusal refers to the loss of opportunity for continued maritime use. While the strength of local opinion may add to the weight to be given to legitimate planning concerns, it should not be a substitute for evidence of any real harm or conflict with any relevant planning policies. The Council was therefore unreasonable and again caused the appellant unnecessary expense in addressing matters other than those related to the heritage assets.

#### *Highway safety*

6. Again, the Council produced no material evidence that there would be a significant impact on the amenity of local residents or on highway safety, compared with established uses, as a result of the scheme, let alone one which would be severe. Its objections were not supported by the highway authority. By contrast, the appellant commissioned a detailed study of likely traffic impact. The Council's stance was therefore unreasonable and resulted in unnecessary expense.

#### **Conclusions**

7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated with regard to 3 of the 4 reasons for refusal of the planning application and that a partial award of costs is justified.

#### **Costs Order**

8. 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 Swale Borough Council shall pay to Quayside Properties Ltd., the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in presenting evidence with regard to vitality and viability, maritime related activities, and highway safety.
9. The applicant is now invited to submit to Swale Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*David Nicholson*

INSPECTOR