

## Appeal Decision

Hearing held on 8 March 2016

Site visit made on 8 March 2016

**by A Napier BA(Hons) MRTPI AIEMA**

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

**Decision date: 14 April 2016**

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**Appeal Ref: APP/D1590/W/15/3141145**

**The Esplanade, Western Esplanade, Southend-on-Sea SS1 1EE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr C G Pettersson (Redab Commercial Ltd) against the decision of Southend-on-Sea Borough Council.
  - The application Ref 15/00155/FULM, dated 29 January 2015, was refused by notice dated 11 August 2015.
  - **The development proposed is described as 'demolition of existing building and construction of new building comprising basement car parking, ground floor restaurant, and four floors of residential accommodation above, providing a total of 24 dwellings, along with new vehicular access onto Western Esplanade'.**
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Hearing applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subject of separate Decisions.

### Background and Main Issues

3. The evidence provided indicates that planning permission was granted on the appeal site for a hotel and restaurant in 2013 and that this permission is currently extant (**'the permitted scheme'**). In addition, at the Hearing, I was provided with details of a more recent planning application for the site (**'the revised scheme'**), which was submitted following the **Council's** refusal of the application that is the subject of this appeal. I understand that, shortly before **the date of the Hearing, the Council's Committee resolved to approve the revised scheme**. As reference was made to this revised scheme at the Hearing, I am satisfied that my intention to take this matter into account will not be prejudicial to any party.
  4. The appeal site is located outside, but close to, the Clifftown Conservation Area and within reasonable proximity to a number of listed buildings. I am mindful of my statutory duties in these regards. The planning application that is the subject of this appeal was refused permission by the Council for three reasons. Two of these related to the provision of affordable housing and local infrastructure and facilities. Following the submission of additional evidence
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and the completion of a legal agreement, the Council subsequently confirmed that these particular matters are no longer in contention.

5. Accordingly, whilst it will be necessary for me to consider these matters, the main issue in this appeal is the effect of the proposal on the character and appearance of the local area, having particular regard to whether or not it would preserve the setting of nearby listed buildings and preserve or enhance the character or appearance of the adjacent Conservation Area.

## **Reasons**

### *Character and appearance*

6. The appeal site contains a public house and restaurant, with a flat above. It is located on the seafront, separated from the shore by the adjacent busy main road. The site backs on to steeply rising open space to the rear and is situated adjacent to sloping public gardens to one side. As a result, the limited existing development on and immediately adjacent to the appeal site is separated by some distance from other development nearby. The considerable extent of green space around the site and its prominent location at the foot of the cliff contributes to the distinctive character of this part of the seafront, which is markedly different to other more developed areas nearby.
7. The Conservation Area is large in size and has a predominantly formal character, although it also includes the public gardens to the east of the appeal site. I consider that the importance of the Area is largely derived from the quality and high degree of architectural consistency of many of its historic buildings, their relationship to each other and the extent and nature of the spaces between and around them. Its location, at the top of the cliff and extending down the slope towards the seafront, is also important. Rows of listed terraces exist towards the edge of the Area. From the details available to me, **including the appellant's heritage assessment**, I consider that the significance of these buildings is largely derived from their age, form, fabric and particular architectural features. In addition, their setting, on the edge of the Conservation Area, adjacent to the cliff edge, adds to their significance and makes a positive contribution to the value of the Conservation Area as a whole.
8. It is not disputed that, in contrast to the Conservation Area, there is an absence of a robust cohesive design style in this particular part of the seafront. However, with some exceptions, I consider that there is a strong horizontal emphasis within both the built development and the cliff gardens along the seafront. Particular architectural elements of the appeal building seek to reinforce this emphasis within the overall design of the proposal. Furthermore, whilst there is limited built development nearby, the design details of the appeal scheme would include elements, such as wave-like balconies and the use of white render, which would provide articulation and reference themes common to its setting within the commercial seafront area of the town. Other interesting design elements, such as the winter gardens to the rear of the building, would provide a quasi-woodland setting for the scheme and enable all apartments to have an important view of the estuary.
9. The highest point of the building would be several metres below the level of the top of the cliff. Nonetheless, although there would be some set back to the upper floors, development would extend across the width of the site and, due to the overall height and substantial depth of the building proposed, the appeal

scheme would be a visually dominant element within the streetscene. Furthermore, notwithstanding the design revisions undertaken during the application process, I find that the considerable scale, mass and box-like form of the proposal would result in an inappropriately bulky development, which would not integrate satisfactorily into its surroundings. As such, it would not sit comfortably with other recent contemporary developments nearby, but would result in a detrimentally obtrusive structure, which would erode the distinctive context and character of this important part of the seafront.

**Moreover, whilst I note the appellant's willingness to undertake additional** tree planting on land around the site, due to the nature of the impacts concerned, such planting would not appropriately address these matters.

10. It is not disputed that the proposal would be visible from within the Conservation Area and would be clearly seen in views of the Area and the listed terraces from the Western Esplanade, as well as from the pier. Whilst there was some divergence of opinion at the Hearing, **the appellant's appeal** statement identifies that, in one key view, the proposal would result in moderate harm to the Conservation Area.<sup>1</sup> Also at the Hearing, I heard evidence from a local resident concerning the historic development of this part of the seafront and the important historic connections between this area and the remainder of the Clifftown estate.
11. Notwithstanding these historic connections and the scale of the development proposed, given the significant differences in land levels around the site, the intervening tree cover and the considerable separation distances between the site and the listed terraces, I am satisfied that the proposal would not be harmful to the setting and significance of the listed buildings. Nonetheless, taking into account the close geographical proximity and visual relationship of the site to the Conservation Area, and for similar reasons to those given above, I consider that the overall scale and design of the proposal would be harmful to the character of the Conservation Area, particularly with regards to the identified Key View 3 from within the Area and in views towards the Area from the Western Esplanade.
12. It has been argued that the proposal would not differ materially in its overall impact on the surrounding area from that of the permitted scheme and would be no more harmful than either that scheme or the revised scheme. From the details available to me, the overall height of the permitted scheme and the appeal proposal would be broadly comparable. However, the depth and design details of the appeal scheme differ markedly from those of the existing permission. As such, I am not persuaded that the permitted scheme is directly comparable with the scheme before me.
13. In addition, the details provided clearly indicate that the appellant considers that the permitted scheme is not viable and is unlikely to be constructed. Furthermore, it has not been suggested, nor do I consider from the evidence available to me, that the impact of the permitted scheme in these respects would be materially more harmful than that of the appeal scheme. Accordingly, overall, I find that the existence of the permitted scheme does not represent an appropriate reason to find in favour of the appeal proposal.
14. Similarly, although I do not have full details of the revised scheme or the **background to the Council's decision on that proposal**, from the limited

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<sup>1</sup> Statement of Case, 21 December 2015, paragraph 6.37

information available to me, the revised scheme differs materially from that of the appeal proposal in its overall design, including in relation to its depth and detailing. Consequently, the visual perception of the mass of this revised scheme would be very likely to be materially different to the appeal proposal. As such, this revised scheme does not lead me to alter my findings above.

15. I understand that the area of land to the west of the site has recently been stabilised, following earlier land slippage experienced on the cliff. The details provided indicate that phase 2 of this scheme involves the construction of a new museum complex on the site. This would be a substantial development, which would be of a considerable scale and occupy a significant area of currently largely open land to the west of the site. As such, it would materially alter the context of the appeal proposal.
16. Whilst I understand that this neighbouring permission is still extant, I also understand that finance is not currently in place for the second phase of the development. Therefore, there is some doubt about the timescale for its construction. In any event, even if or when this other scheme does proceed, the existence of other development, or permissions, elsewhere does not represent an appropriate reason to allow a proposal that would cause harm. Accordingly, this matter is also not one that leads me to a different finding in respect of the appeal proposal.
17. Consequently, considered overall, although I have found that the proposal would not lead to harm to the setting and significance of the nearby listed buildings, for the reasons given above, I conclude that it would have a materially detrimental effect on the character and appearance of the area, including in respect of the nearby Conservation Area. A number of local planning policies have been drawn to my attention. Of those, I consider the most relevant in relation to this issue are the ***Southend on Sea Core Strategy 2007*** Policies KP2 and CP4, and the ***Southend on Sea Development Management Document 2015*** Policies DM1, DM4 and DM6. For the above reasons, the proposal would be contrary to these policies, where they seek to protect local character and appearance, including in relation to the historic environment.
18. Reference has also been made to policies from the consultation draft ***Southend Central Area Action Plan***. This is an emerging document and, as such, its policies may be subject to change, which considerably limits the weight that I give to them. Nonetheless, insofar as they relate to this issue, they generally seek to carry forward the policies of the existing development plan. As such, they do not lead me to alter my findings above.
19. The proposal would cause harm to the Conservation Area, to which I give great weight and importance. However, it would represent the development of one site outside, although in close proximity to, the designated heritage asset. As such, I find that the harm, whilst material, would be less than substantial. Paragraph 134 of the National Planning Policy Framework (the Framework) requires that, in the case of designated heritage assets, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
20. The main public benefits resulting from the scheme would be the provision of 24 new dwellings, in a location that is within easy reach of a range of local services and facilities, as well as the provision of a ground floor restaurant,

servicing and parking facilities within the development. This would add to the local housing stock and provide for a commercial element within the re-use of this brownfield site. The scheme as a whole, both during construction and after occupation, would be likely to result in support for other local services and facilities within the area and would contribute to the regeneration of the seafront. As such, the proposal would have clear social and economic benefits. Given the overall scale of the scheme and the general encouragement in the Framework for such development, I give these benefits significant weight.

21. Furthermore, I understand that the design of the proposal would enable the use of a timber frame for much of the building, which would contribute towards the viability and deliverability of the scheme and lead to a more sustainable use of resources. In addition, the appellant confirms that the scheme would support the use of renewable energy, reduced water consumption and is designed to have a high thermal efficiency, whilst the green roof proposed would also enhance biodiversity on the site. However, many of these matters would seek to mitigate impacts of the development proposed. In any event, I am not satisfied that it has been demonstrated that the appeal proposal represents the only way to achieve such benefits or that other potentially less harmful schemes would not be feasible. As such, I give these matters only limited weight.
22. The appellant also contends that the proposal would result in benefits to the stability of the cliff. However, whilst I have no doubt that any redevelopment of the site would need to address this matter, having regard to the evidence provided by the Council, I am not satisfied that the details provided are sufficient to demonstrate that work would be necessary in the absence of such redevelopment. Accordingly, whilst the proposal may result in some added assurance regarding this matter, I give it only very limited weight.
23. Paragraph 132 of the Framework advises that great weight should be given to the conservation of a heritage asset in considering the impact of a proposal on its significance. In addition, paragraph 131 of the Framework refers to the desirability of new development making a positive contribution to local character and distinctiveness. For the above reasons, I consider that the development would not make such a contribution and, even if the use of the site as proposed were viable, it would not represent its optimum use.
24. For these reasons, I conclude that the benefits of the proposal would not be sufficient to outweigh the harm identified to the significance of the heritage asset or to the character and appearance of the local area. The proposal would not meet the aims of paragraph 17 of the Framework, to achieve high quality design, take account of the different roles and character of different areas and conserve heritage assets in a manner appropriate to their significance.

### ***Other matters***

25. It is no longer a matter of contention between the main parties that the scheme is not currently viable and cannot support the provision of any affordable housing. Having regard to the evidence provided on this matter, there is nothing before me that would lead me to a different conclusion in this respect. As such, taking into account the Planning Practice Guidance (PPG) on viability, I am satisfied that the absence of such provision is not a matter that should count against the proposal in this case.

26. A completed legal agreement was provided at the Hearing that would make provision for a review mechanism, which would potentially provide for financial contributions towards the off-site provision of affordable housing, should the viability of the scheme improve in the future. The provision of affordable housing would be a potential further benefit of the scheme and I recognise that such approaches have been used elsewhere, particularly for longer and medium-term phased developments. However, on the evidence available to me, I am not satisfied that it has been adequately demonstrated that such an approach would be appropriate in this particular case.
27. The relevant development plan policy does not include reference to a review mechanism.<sup>2</sup> **Furthermore, whilst reference is made within the Council's *Supplementary Planning Document 2 Planning Obligations 2015* and the PPG to a flexible approach to the provision of affordable housing in relation to viability, neither of these documents include specific reference to the provision of a review mechanism as proposed. Having regard to the guidance in the PPG, there is nothing before me to suggest that the appeal proposal would be a phased development. I am also mindful that decisions should be taken with regard to **current costs and values and in relation to today's** circumstances.<sup>3</sup>**
28. Accordingly, I am not satisfied that the evidence available to me adequately demonstrates that the review mechanism would be necessary to make the appeal development acceptable in planning terms. As such, having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework, I am unable to take this matter into account in my consideration of the appeal.
29. The legal agreement also includes provision for financial contributions for works to the highway required as a result of the proposal, for public art and tree planting, and the provision of a travel pack linked to a travel plan, with monitoring arrangements. However, as these provisions would address potential impacts of the proposed development, from the evidence available to me and given my findings above, it is not necessary for me to consider them in detail.
30. The appeal site is also within close proximity to the European designated Benfleet and Southend Marshes Special Protection Area and Ramsar site and the Benfleet and Southend Marshes Site of Special Scientific Interest (SSSI). Having regard to the consultation response of Natural England and with the use of appropriate conditions, I am satisfied that the proposal would not be likely to have a significant effect on the European site and would not be likely to have an adverse effect on the SSSI.
31. A badger survey was provided at the Hearing, which confirms that with appropriate mitigation the proposal would not have a detrimental impact on badgers. However, an Extended Phase 1 Habitat Survey was submitted with the application that identifies the adjacent parks building has some potential for roosting bats and recommends that a presence/absence survey is undertaken in this regard, if this building is included within the development proposals. This building is immediately adjacent to the appeal site and is intended to be retained.

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<sup>2</sup> PPG ID: 23b-003-20150326

<sup>3</sup> PPG ID: 10-017-20140306

32. It was confirmed at the Hearing that no such survey has been carried out. The Statement of Common Ground between the main parties indicates that it is considered that this matter requires further investigation, which is proposed to be addressed by condition. However, having regard to the evidence before me and national guidance in this respect, I am not satisfied that the use of a condition would be appropriate if there is a real potential risk that bats could be adversely affected by the proposal. As such, this is also a matter that counts against the scheme.
33. I have found above that there are a number of benefits to the scheme, which are matters that weigh in its favour and contribute towards the aim of achieving sustainable development. However, paragraphs 6-9 of the **Framework indicate that 'sustainability' should not be interpreted narrowly.** Elements of sustainable development cannot be undertaken in isolation but should be sought jointly and simultaneously. Sustainable development also **includes 'seeking positive improvements in the quality of the built, natural and historic environment as well as in people's quality of life'.**
34. For the reasons given, I conclude that the benefits of the proposal would not be sufficient to outweigh or address the harm identified to the character and appearance of the area, including the Conservation Area, or the potential risk of harm to protected species. The proposal would not, therefore, meet the overarching aims of the Framework to achieve sustainable development.

### **Conclusion**

35. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*A Napier*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr C G Pettersson	Appellant
Mr Ben Stagg BA(Hons) DipArch RIBA	Stagg Architects Limited
Mr Nick Fennell	Dalton Warner Davis LLP
Mr Nick Bowen	Dalton Warner Davis LLP
Mr Hugo Greer-Walker	Stone King LLP
Dr Amer Hirmis	Capital Business Strategies (CBS) Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Charlotte Galforg BA(Hons) MRTPI	Team Leader Development Control
Ms Abbie Greenwood BSc(Hons) PGDip MRTPI	Senior Planner Design and Conservation
Mr Jamie Purvis MRICS	BNP Paribas Real Estate
Mr Philip McIntosh	Team Leader Development Control
Ms Amanda Rogers	S106 and CIL Officer
Mr Richard Atkins BSc CEng MICE	Coastal Defences Engineer

### INTERESTED PERSONS:

Ms Jennifer Butler	Local resident
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## **DOCUMENTS SUBMITTED AT THE HEARING**

1. **The Council's costs application**, including a **rebuttal to the appellant's costs application**, dated March 2016
2. Completed legal agreement, dated 8 March 2016
3. **Copy of Council's email to the Inspectorate, dated 2 March 2016** (provided for appellant only)



4. Revised Design and New Artists Impressions, dated 1 July 2015
  5. BNP Paribas Real Estate Supporting Appeal Statement, including appendices, dated February 2016
  6. Copies of letters of representation on the planning application
  7. **The Council's** Supplementary Planning Document 2 Planning Obligations 2015
  8. Extract of **the Council's Central Area Action Plan DPD Consultation Draft**
  9. Plans and Design and Access Statement, dated November 2015, of the revised scheme
  10. Comparison section drawings of the appeal and revised schemes
  11. Breakdown of costs for proposed highway works
  12. Badger Survey, dated 20 November 2014
  13. **Appellant's closing statement**
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## Costs Decisions

Hearing held on 8 March 2016

Site visit made on 8 March 2016

**by A Napier BA(Hons) MRTPI AIEMA**

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

**Decision date: 14 April 2016**

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### **Costs application A in relation to Appeal Ref: APP/D1590/W/15/3141145 The Esplanade, Western Esplanade, Southend-on-Sea SS1 1EE**

- 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 Mr C G Pettersson (Redab Commercial Ltd) for a partial award of costs against Southend-on-Sea Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing building and construction of new building comprising basement car parking, ground floor restaurant, and four floors of residential accommodation above, providing a total of 24 dwellings, along with new vehicular access onto Western Esplanade.
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### **Costs application B in relation to Appeal Ref: APP/D1590/W/15/3141145 The Esplanade, Western Esplanade, Southend-on-Sea SS1 1EE**

- 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 Southend-on-Sea Borough Council for a full award of costs against Mr C G Pettersson (Redab Commercial Ltd).
  - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing building and construction of new building comprising basement car parking, ground floor restaurant, and four floors of residential accommodation above, providing a total of 24 dwellings, along with new vehicular access onto Western Esplanade.
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## Decisions

1. Application A and Application B for an award of costs are refused.

### **The submissions for Mr Pettersson and the Council**

2. The costs applications were submitted in writing, supplemented by additional points which were made orally.
  3. In brief, Mr Pettersson considers that sufficient information was provided within the application process to adequately demonstrate that the scheme is not currently viable and would not be able to support the provision of affordable housing. Furthermore, at the meeting that took place in August 2015, the **Council's adviser accepted that his assessment of viability would need to be reconsidered in light of the additional information provided to the Council by Mr Pettersson. Despite this, the Council's officers presented the application to its Planning Committee the following day, without updating the members of the**
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Committee in this regard, although the period of time for the determination of the application had been extended to September 2015, which would have enabled sufficient time for these matters to be further considered. As a result, the Council acted unreasonably in its refusal of the application for this reason, which has led to the need for Mr Pettersson to provide detailed evidence on this issue as part of the appeal process, so incurring unnecessary associated costs in this regard.

4. In summary, the Council considers that Mr Pettersson acted unreasonably in his submission of the appeal as, given the Council had indicated that it was likely to support a revised proposal on the site, it was unnecessary. Furthermore, despite the recent resolution by the Council to approve the revised scheme, Mr Pettersson did not withdraw the appeal, which resulted in the Council incurring unnecessary expense. Whilst Mr Pettersson subsequently sought to reach agreement with the Council regarding the withdrawal of the appeal, the approach made to the Council was considered untenable, as it required the Council to drop all three reasons for refusal.

### **The response by the Council and Mr Pettersson**

5. The responses were made in writing, supplemented by additional points which were made orally.
6. Briefly, the Council contends that it did not act unreasonably in its consideration of viability as part of the application process. Mr Pettersson had been given ample opportunity to provide the information requested as part of the application process and the determination of the application had been delayed to allow for the provision of additional details. The intended Planning Committee date had been made clear to Mr Pettersson and the Council did not act unreasonably in determining the application at that meeting, which took place in the 26<sup>th</sup> week following the submission of the application, as referred to in the Planning Practice Guidance (PPG). The Council had no indication at that time that issues regarding viability would be satisfactorily addressed and concerns regarding the design of the proposal remained. The September date agreed for the extension of time was intended to allow for the completion of a legal agreement following consideration at the Planning Committee in August. Although the Council is now in agreement with Mr Pettersson on the matter of viability, this position was reached only after the provision of additional information relating to site value and construction costs, which was considered as part of the appeal process. Without this information, it was not possible for the Council to conclude that the proposal could not support the provision of affordable housing and, as there is a policy requirement for such provision, the Council did not act unreasonably in refusing permission partly for this reason.
7. Broadly, Mr Pettersson considers that he did not act unreasonably in his submission of the appeal. Whilst the Council has resolved to approve the revised scheme on the site, this scheme is for a smaller number of residential units and of a significantly different design, which would have implications for viability and **construction costs**. **As a result, Mr Pettersson's preferred scheme** remains the appeal proposal, for reasons of viability and deliverability, and it was entirely reasonable for him to pursue it at appeal. As such, the expenses incurred by the Council in this respect were necessary. Furthermore, on a without prejudice basis, Mr Pettersson attempted to reach agreement with the

Council regarding the withdrawal of the appeal prior to the Hearing, but was unable to do so.

## Reasons

8. The PPG advises that costs may only be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
9. Although the provision of an element of affordable housing as part of a scheme of this size is a requirement of the development plan, it is appropriate to take the viability of the scheme into account in relation to such provision. The PPG does not specify a particular method for the assessment of viability. However, the **Council's Supplementary Planning Document 2 Planning Obligations 2015** (SPD2) requires the use of a residual land value methodology and identifies particular approaches to the assessment of land value, as well as other elements, such as build costs.<sup>1</sup> The updated SPD2 was adopted in July 2015, prior to the determination of the application, and provides a clear basis for a consistent approach to be taken in the assessment of this matter within the area. In addition, I understand that a draft of the document was published in 2014, which included a similar approach to the assessment of viability.
10. The details provided clearly indicate that Mr Pettersson has consistently maintained that the scheme is not currently viable and cannot support affordable housing. However, the evidence before me indicates that the approach taken by Mr Pettersson to the assessment of land value changed over time and that some information in relation to costs, for example, was not substantiated by documentary evidence. For the above reasons, I consider that the Council did not act unreasonably in seeking to ensure that the details provided followed the approach set out within its SPD2. Moreover, I am also mindful that the Council had received specialist advice from qualified consultants on this matter, which the evidence before me indicates had been communicated with Mr Pettersson as part of the application process.
11. Taking into account the need to avoid undue delay in the determination of planning applications, I consider that the Council did not act unreasonably by not further delaying consideration of the proposal, but resolving to determine the application in August, several months after it had been submitted. It is not disputed that some of the revised information regarding viability, together with **the related comments of the Council's specialist adviser**, were not before the Committee when it determined the application. However, the details before me also indicate that some of the additional documentary evidence considered necessary by the Council to fully assess viability was only provided after the determination of the application.
12. As a result, I am satisfied that, notwithstanding its subsequent change in position, it was not unreasonable for the Council to consider that the information available at the time of the determination of the application was not sufficient to justify a departure from the development plan policy requirement for the provision of affordable housing. Consequently, I find that it determined the application in a reasonable manner and, as such, the expenses incurred in relation to the provision of evidence regarding viability as part of this appeal were necessary.

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<sup>1</sup> SPD2, paragraph 2.10

13. Nonetheless, the Council refused the application for three reasons, one of which related to the impact of the proposal on the character and appearance of the area. I have found in my decision that the revised scheme is not directly comparable with the appeal scheme and, in order for Mr Pettersson to pursue that particular proposal, it was necessary for him to do so at appeal. Given that the appeal proposal is his preferred scheme for the site, I consider that it was not unreasonable for him to follow this approach, even taking into account **the Council's recent resolution to approve** the revised scheme on the site.
14. Furthermore, although I have found, for the reasons given in my decision, that the appeal proposal would be unacceptable, Mr Pettersson submitted detailed evidence in support of the proposal to indicate why he considered the proposal should be permitted. As such, overall, I consider that his decisions to proceed to appeal, and not to subsequently withdraw it, were not unreasonable and the resulting expenses incurred by the Council were necessary.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in respect of either application.

*A Napier*

INSPECTOR