
Costs Decision

Site visit made on 27 September 2016

by B Bowker Mplan MRTPI

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

Decision date: 21 October 2016

Costs application in relation to Appeal Ref: APP/U1105/W/16/3153630 Peace Memorial Playing Fields, Coly Road, Colyton, Devon EX24 6PU

- 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 East Devon District Council for a full award of costs against DBD Developments.
 - The appeal was against the refusal of planning permission for proposed development of 5 detached dwellings on land adjacent to Peace Memorial Playing Fields Colyton.
-

Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only 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. PPG paragraph 53 states that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. PPG paragraph 53 goes on to give examples of unreasonable behaviour which includes an appeal that follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
4. The Council's overall case for seeking costs is owing to the similarities of the proposal with a previously dismissed appeal decision¹ at the site and that circumstances have not changed in the intervening period. The Council consider this represents unreasonable behaviour that has led to wasted and unnecessary cost in defending the appeal. However, the appellants state that significant delays were experienced during the planning application process and that a swiftly dealt with application would have been granted permission. In addition, the appellants consider it was reasonable to question the Council's ability to demonstrate a five year housing land supply and the delays relating to the Neighbourhood Plan (NP) and East Devon Villages Development Plan Document (EDVDPD).

¹ APP/U1105/W/15/3137990

5. I agree with the Council in that the circumstances have not materially changed since the previous appeal decision. The appellants would have been aware that the previous appeal was contrary to policies of the recently adopted New East Devon Local Plan (NEDLP) and would have pre-empted the NP and EDVDPD. These circumstances have not materially altered in the last few months since the previous appeal decision. In addition, no substantive evidence regarding the Council's ability to demonstrate a five year housing land supply was put before me. Moreover, arguments regarding housing supply, the NEDLP's development strategy, and the NP and EDVDPD in the main are similar to those put to the previous Inspector.
6. I have taken into account the appellants comments regarding delays experienced during the application process. However, this does not justify the submission of a similar appeal following the recent appeal decision in which circumstances that have not materially changed. Whilst the appellants note the Council relied upon of officer's delegated report in defending the appeal, officer time and administrative duties would still have incurred costs for the Council.
7. Consequently I conclude that the appellants have demonstrated unreasonable behaviour that has resulted in wasted and unnecessary costs for the Council in having to defend the appeal.

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 DBD Developments shall pay to East Devon District Council the full costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to DBD Developments, 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 Cost Office is enclosed.

B Bowker

INSPECTOR