
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/16/3147609 Land North of Cat Aclew, Station Road, Colyton, Devon EX24 6EY

- 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 Mr Anthony Carthy.
 - The appeal was against the refusal of planning permission for erection of 2 equity share family houses for local families.
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Decision

1. The application for costs is refused.

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 considers the proposal has the similarities with a previously dismissed appeal decision¹ and that circumstances have not changed in the intervening period. In support of its case, the Council state that the appellant has not submitted any new substantive evidence to challenge the site's flood zone classification and has failed to conduct an adequate sequential test, issues that were both raised in the previous appeal. In addition, the Council state that the appellant's sequential test disregarded its suggested sites. The Council consider these factors represent unreasonable behaviour that has led to wasted and unnecessary cost in defending the appeal.
5. Whilst I have dismissed the appeal on flood risk grounds, I consider that the appellant had a new basis on which to challenge the flood classification which includes recent comments from the Environment Agency, the suggested flood

¹ APP/U1105/W/15/3137990

modelling condition and reference to the demolition of a house near the River Coly. Similarly, as the appeal involved equity share housing, the proposal is materially different to the previous appeal and thus a different approach to the sequential test was put forward. In addition, the appellant gave a reasoned approach as to why the Council's suggested sites were disregarded and placed emphasis on the shared equity aspect of the appeal that required consideration as part of the planning balance.

6. Consequently, I cannot agree with the Council that the proposal is similar to the previously dismissed appeal as new material circumstances were raised by the proposal that provided a reasonable basis for the appeal.
7. Therefore, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case. For this reason, and having regard to all matters raised, an award for costs is not justified.

B Bowker

INSPECTOR