
Costs Decision

Site visit made on 1 June 2017

by Neil Pope BA (Hons) MRTPI

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

Decision date: 16 June 2017

**Costs application in relation to Appeal Ref: APP/Y1138/W/17/3167891
Land and buildings east of Dulings Farm, Copplestone, Devon, EX17 5PE.**

- 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 Louis Dulling of PCL Planning for a full award of costs against Mid Devon District Council (the LPA).
 - The appeal was against the refusal of the Council to grant outline planning permission for the erection of up to 60 dwellings and means of access (amended description).
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Decision

1. The application is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may 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. Members of a local planning authority are not bound to accept the advice of its officers or of any statutory consultees. However, where they take a contrary stance evidence should be produced to substantiate their concerns. The failure to do so could amount to unreasonable behaviour that causes an appellant to incur unnecessary or wasted expense.
 4. I agree with the applicant that it was unreasonable for the LPA to withhold permission on the basis of fears regarding the demand for primary school places and the risk to highway safety without any cogent evidence to justify taking a contrary position to the Education Authority and Highway Authority. As it was not until the LPA submitted its Statement that reasons for refusal (RfR) Nos. 4 and 5 were withdrawn, the applicant incurred unnecessary expense in addressing these matters at appeal. I note that the LPA is not contesting the costs application in respect of RfR Nos. 4 and 5. I therefore find that a partial award of costs would be justified in respect of these matters.
 5. The District Council also withheld permission on the basis of flood risk. Whilst this is an important matter in the determination of planning applications, a site-specific flood risk assessment was submitted on behalf of the appellant and an addendum in response to matters raised by Devon County Council in its role as Local Lead Flood Authority (LLFA). The LLFA subsequently advised that it had no objections subject to the inclusion of an appropriate planning condition on any permission. The Environment Agency also informed the District Council that it was content with the proposals.
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6. In withholding permission on flood risk grounds no technical or other cogent evidence was submitted by the Council to substantiate its concerns or justify taking a contrary approach to the one recommended by the LLFA. This amounts to unreasonable behaviour which caused the appellant to incur unnecessary expense in addressing this matter at appeal.
7. However, I have found within my appeal decision that permission should be withheld on other grounds. The Council did not therefore unreasonably prevent or delay development that should have been permitted. A full award of costs would not therefore be justified.
8. Given the above, I find that unreasonable behaviour resulting in unnecessary expense, as described within the PPG, has been demonstrated and that a partial award of costs would be justified.

Costs Order

9. 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 Mid Devon District Council shall pay to Mr Louis Dulling of PCL Planning, the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in responding to the Council's concerns regarding reasons for refusal nos. 3, 4 and 5.
10. Mr Louis Dulling of PCL Planning is now invited to submit to Mid Devon District 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.

Neil Pope

Inspector