

Costs Decision

Hearing held on 10 May 2017

Site visit made on 10 May 2017

by Nigel Harrison 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/X1118/W/16/3161218 Hayne Barton, Burrington, Devon, EX37 9JW

- 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 Paul Cullen for a full award of costs against North Devon District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for conversion of barns to two dwellings and associated works.
-

Decision

1. The application for an award of costs is refused.

The submissions for Mr Paul Cullen

2. The application was made in writing.

The response by North Devon District Council

3. The Council's response was made in writing.

Reasons

4. Paragraph 030 of the Government's *Planning Practice Guidance* (PPG) says that irrespective of the outcome of the appeal, costs can only be awarded against a party which has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
 5. Paragraph 048 explains that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal, for example by preventing or delaying development which should clearly be permitted having regard to the development plan and other material considerations, by failure to produce evidence to substantiate the reasons for refusal, and by giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
 6. The appellant submits that the Council's case was not substantiated and relied on assumptions and conflict with policies which are not relevant to the nature of the proposed development.
 7. However, I am satisfied that the Council adequately substantiated its concerns with reference to the development plan, the emerging Local Plan, and other material considerations. The appeal statement and oral evidence presented at
-

the Hearing specifically sets out the areas of concern and a Statement of Common Ground was submitted which defined the issues and the policies referred to. It will be seen from my decision that although the proposal conflicts with parts of saved Policy ECN5 of the *North Devon Local Plan 2006* (LP), there is some inherent conflict between that policy and paragraph 55 of the *National Planning Policy Framework* (the Framework) and this reduces the weight I can give the policy. This factor, together with the weight I have given in my reasoning to paragraph 55 of the Framework and Policy DN27 of the emerging *North Devon and Torridge Local Plan 2011-2031* (NDTLP) represent important material considerations, having regard to local and national policies concerning the re-use of rural buildings generally and heritage assets in particular.

8. In any appeal against non-determination PPG paragraph 047 says Local Planning Authorities should give a proper explanation of its reasons for not reaching a decision within the time period, and why permission would not have been granted had the application been determined within the relevant period.
9. Much of the delay in processing the application arose from the Council's suggestion that the application would be approved, subject to the appellant entering into a Section 106 agreement. This did not require the dwellings to be 'affordable', but merely occupied as their main residence by someone who satisfied the local needs occupancy criteria of the Parish. I have some concerns that this 'compromise' approach is not a requirement of any of the policies to which I have been referred. However, if followed, it would have enabled the buildings to be occupied, at least in the first instance, by the appellant's daughters. That this approach was not taken up was the choice of the appellant, and I note his reasons for doing so. Nonetheless, if a Section 106 agreement in these terms had been entered into at this time, it would have avoided the need to appeal.
10. I have greater concerns regarding the Council's decision to refer to (and rely on to a large extent) LP Policy HSG8 concerning affordable housing provision in rural areas at a fairly late stage in the process; and its decision to treat the proposal as a 'rural exceptions site' where the restrictions on affordable housing provision set out in the November 2014 Written Ministerial Statement would not apply. In any event, as seen from my decision I was not convinced that Policy HSG8 should apply, not least because the proposal was not promoted as an affordable housing scheme. It would also appear that the Council has been somewhat selective, and based on the examples referred to me, not entirely consistent in seeking to apply this policy to rural conversion schemes. This adds to my concerns about the Council's policy approach in its consideration of the appeal scheme, and the nature and direction of some of its discussions with the appellant and his agent.
11. However, where planning issues are finely balanced, as here, an award of costs arising from such substantive matters is unlikely to be made against the Local Planning Authority. Nonetheless, I agree with the appellant that the protracted nature of the negotiations throughout the period may to some extent have been avoided, had some of these concerns have been 'flagged up' earlier.
12. Overall however, I am satisfied that the delays which arose in the processing of the application (essentially arising from differences of opinion and policy interpretation), also flowed from the ultimately inconclusive Section 106

Agreement discussions and the change of case officers (and the agent employed by the appellant) during the period when the Council was considering the application. They do not, in themselves, amount to unreasonable behaviour resulting in unnecessary expense in my view.

13. In my appeal decision I have reached a different conclusion from the Council on the merits of the proposal. Nonetheless, for the above reasons I conclude that unreasonable behaviour resulting in unnecessary expense, as described in PPG paragraphs 030, 047 and 048 has not been demonstrated in this case.

Nigel Harrison

INSPECTOR