The Planning Inspectorate

Costs Decision

Site visit made on 13 July 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 03 August 2017

Costs application in relation to Appeal Ref: APP/X1165/W/17/3173769
Land to the rear of 16 to 26 Castor Road, Brixham TQ5 9PY

- 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 Eric Brice for a full award of costs against Torbay Council.
- The appeal was against the refusal of planning permission for development described as: "proposed 10 No new residential units on land to the rear of 16 to 26 Castor Road, Brixham".

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The application for costs is made with respect to the substantive issues raised within the reasons for refusal. The planning application was refused contrary to professional officer's recommendations made within a comprehensive report that was discussed at the Council's Development Management Committee on 12 December 2016. I have allowed the appeal but it does not automatically follow that costs will be awarded. The members of the committee were not bound to accept the recommendation of their planning officers and there may be matters of judgement that are not clear cut. However, the PPG makes it clear that an aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.

4. The information that the local planning authority must provide on their decision notices is set out in article 35 of the Development Management Procedure Order[1]. This includes the requirement, where planning permission is refused, to state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan that are relevant to the decision. Although the reasons quoted only the policy titles rather than specific paragraphs, this is not unusual in my experience. I then look to other documents such as the committee report or minutes and the Council's appeal

[1] Town and Country Planning (Development Management Procedure) (England) Order 2015

statement to provide more detailed references to individual elements of policies that would potentially be breached. The minutes of the committee meeting on 12 December 2016 gave no indication of the discussion that resulted in the decision. They do not help to explain why members went against the in-depth report by their professional officers. An appeal statement was submitted however and I refer to various aspects of that below.

5. The reason for refusal relating to flood-risk was resolved following the Council's decision in what appears to be a reasonable way by both main parties. Given the remaining matters that were in dispute, an appeal was still necessary if the appellant wished to pursue the same scheme. I do not share the applicant's view that a fundamental matter such as drainage within a defined critical drainage area should be left to be dealt with by planning condition. If, however, that had been the only matter in dispute a resubmission of the planning application may have resolved matters and if so, an appeal would not have been necessary. The remaining reasons for refusal needed to stand up to scrutiny on their planning merits within the appeal process.

6. The first reason for refusal included some detail on the general nature of what the Council found objectionable with respect to neighbouring living conditions. The Council's statement set out requirements of the relevant policies in the Local Plan[2] (LP). Some figures are given for distances of some of the proposed dwellings from existing properties. However these do not stand up to scrutiny in my view and little account is taken of the urban context of the area. There is no absolute privacy within neighbouring properties in this area at the moment. Whilst the proposals will create more buildings, the distances from existing buildings appear to be very reasonable to me. Although a previously dismissed appeal on this site was referred to which indicated some sensitivities due to the location, no consideration appears to have been given to the solutions to those matters that have now been proposed. The Council did not satisfactorily convince me that there was much merit to their concerns.

7. Advice on reducing parking spaces to 1 per unit was given at the pre-application stage by officers as it would provide design benefits. The LP parking standards provide a degree of flexibility not only in town centres but in other areas where there is a greater choice of transport. General assertions are made but it is not explained through any evidence why the site is in an area where the parking provision proposed would not be adequate or why an increase in parking on the proposed roads or those nearby would be harmful.

8. The Council's LP policies encourage making good use of land. The Council do not dispute that the Urban Design Guide[3] is still material to the case and this also encourages greater densities in accessible places. The explanation of density within the Council's statement implied that even though the development would be a little over the minimum required by policies, a reduced number of dwellings should be proposed. This is not well founded in planning policies particularly given the lack of a justifiable argument that the proposed density is harmful. The use of the non-specific, vague term "overdevelopment" within the first reason for refusal was not supported by the analysis of density within the statement.

9. The appellants were advised by professional consultants through the entire

[2] Torbay Local Plan, A Landscape for Success, The Plan for Torbay: 2012 to 2030
[3] Urban Design Guide Supplementary Planning Document, adopted 2007

processing of this appeal. This appeal process has therefore resulted in the incurring of their fees and also avoidable delay to the appellant.

10. I consider that the refusal of planning permission was not well founded. Unreasonable behaviour resulting in the unnecessary and wasted costs as described in the PPG, has been demonstrated. A full award of costs is justified.

Costs Order

11. 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 Torbay Council shall pay to Mr Eric Brice, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Torbay 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.

A Harwood

INSPECTOR