



Costs Decision

Site visit made on 27 June 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 22nd August 2017

Costs applications in relation to Appeal Ref: APP/Q1153/W/17/3170746 Land south of North Road, Lifton, Devon

- 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 Mrs SJL Hamblin, Mrs ME Guthrie & Mrs AT Bucklow for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for a proposal described as "outline planning application for a residential development (Class C3) of up to 20 dwellings with vehicular and pedestrian access to North Road, car parking, associated landscaping and infrastructure, public open space and Accessible Natural Greenspace – External access not reserved".
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Decision

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

Preliminary matter

2. An application was submitted by the appellant for a substantive award of costs dated 23 June 2017 ("the First Application"). A second application was submitted by the appellant for a procedural award of costs dated 14 July 2017 ("the Second Application"). Both applications arise out of circumstances relating to the same appeal. I am therefore satisfied that they can be dealt with in a single decision.

Reasons

3. Planning Practice Guidance ("the 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 expense in the appeal process. Furthermore, local planning authorities are at risk of an award of costs if they behave unreasonably with respect to either the substance of the matter of the appeal or on procedural grounds.
4. The PPG provides a number of examples of the types of behavior that may give rise to an award of costs which includes failing to provide evidence to substantiate the reasons for refusal or making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Likewise, a lack of cooperation with the other party, delay in providing information or a failure to adhere to deadlines are further examples in respect of procedural awards.

The First Application

5. The First Application seeks a substantive award of costs on the basis that the Council has failed to provide evidence to substantiate the reasons for refusal; has offered vague, generalised and inaccurate assertions about the proposals landscape, visual and highway safety impact, which are unsupported by any objective analysis; and refused planning permission on a planning ground capable of being dealt with by conditions¹.
6. Two reasons for refusal were provided by the Council and both were maintained as part of this appeal. My decision makes clear that I do not agree with the Council's assessment on either ground. However, it does not follow that the Council has acted unreasonably and that an award of costs should be made. Nevertheless, while the Council is not required to follow the advice of its professional officers, if a different decision is reached by members, the Council has to demonstrate *on planning grounds* why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. In respect of refusal reason 1, while I acknowledge that the Council's case does not seek to rebut many of the points made in the LVIA, issues relating to character and appearance are a matter of judgement for decision makers and members, in reaching their decisions, are entitled to reach different conclusions to those of officers. I do not accept that doing so would require a detailed rebuttal of the LVIA or any express consideration of the conditions proposed in mitigation. In formulating this reason for refusal, the Council's case was cogent and not without merit. While I do not agree with their assessment, I do not consider they have acted unreasonably in pursuing this reason for refusal.
8. However, in respect of refusal reason 2, the Council accepts that the site is in a sustainable location and has access to a number of nearby services. Furthermore, the Local Highway Authority has advised that, subject to the imposition of conditions, the proposal would be unlikely to result in any detriment to highway safety. In spite of this, the Council has maintained that the proposal would be detrimental to pedestrian safety and result in a heavy reliance on car use. However, no robust evidence has been provided to substantiate this position. There is no evidence of accidents having taken place or anything to suggest that the existing footways have resulted in any safety concerns. Similarly, there is nothing to suggest that the limited lack of footways would discourage more sustainable modes of transport.
9. In failing to put forward any firm evidence to substantiate its assertion that the proposal would impact detrimentally on pedestrian safety or result in a heavy reliance on car use, I consider the Council has acted unreasonably. This has resulted in the appellant having to incur unnecessary expenditure in defending the appeal and is the type of behaviour that the costs regime is intended to discourage. Accordingly, although I am satisfied that the Council has not acted unreasonably in respect of refusal reason 1, I nevertheless find that it has done so in respect of refusal reason 2. This has resulted in the appellant having incurred unnecessary expense in responding to this part of the appeal.
10. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting refusal reason 2 (pedestrian safety), is justified.

¹ All of which are examples of the types of behaviour that the PPG indicates may give rise to such an award.

The Second Application

11. The Second Application seeks a procedural award of costs on the grounds that the Council created unreasonable delays in seeking last minute amendments to the Section 106 Planning Obligation. While I accept that the process of completing such an Obligation can, at times, be frustrating, this is the case with many legal formalities and last minute alterations can, and often, do occur. Nevertheless, it appears from the dating of the document that it was completed around 2 working days after the bespoke deadline and that copies were forwarded by the Council within a reasonable timescale. While I note the appellants' frustrations with the process, I have seen nothing which would lead me to conclude that the circumstances leading to a procedural award of costs is present in this case. As such, I do not find unreasonable behaviour on the part of the Council in this respect.

Costs Order

12. 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 West Devon Borough Council shall pay to Mrs SJL Hamblin, Mrs ME Guthrie & Mrs AT Bucklow, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting refusal reason 2 which concerned pedestrian safety.
13. The applicants are now invited to submit to the 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.

Rory Cridland

INSPECTOR