
Costs Decision

Site visit made on 27 November 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2018

Costs application in relation to Appeal Ref: APP/X1118/W/17/3181706 Former Gospel Hall, New Road, Bishops Tawton EX32 0DE

- 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 George Thomas for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of planning permission for erection of 5 new residential dwellings.
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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, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. An award of costs does not necessarily follow the outcome of the appeal. However, as I have dismissed the appeal it does mean that a full award of costs would not be justified. Nevertheless, it is appropriate for me to consider whether a partial award of costs on any of the individual parts of the application is warranted.
4. The appeal was dismissed on the grounds that the proposal would fail to preserve or enhance the character or appearance of the Bishops Tawton Conservation Area. The appellant's evidence on that issue was a necessary part of the appeal process.
5. I have been given no examples of unreasonable behaviour in relation to the second refusal reason. The Highway Authority's concerns were properly articulated and linked to development plan policy. Thus it was not unreasonable for the Council to rely upon the advice of this consultee, albeit the effect on highway safety is an issue requiring the exercise of planning judgement.
6. The PPG explains that the decision on whether a sustainable drainage scheme (SuDS) would be inappropriate in relation to a particular development proposal is a matter of judgement for the local planning authority, having regard to advice from the relevant flood risk management bodies. The Lead Local Flood Authority does not appear to have been consulted in this particular case. The Council produced no evidence of its own to demonstrate that the site is liable to

flood, or that it has been the cause of flooding elsewhere. It also failed to provide any compelling arguments to convince me that SuDS are not feasible on the site. Given that the principle of development is accepted, the issue of surface water drainage does not go to the heart of the application and could have been dealt with by condition. The Council's insistence that SuDS details should be provided prior to approval of the application constitutes unreasonable behaviour, as set out in paragraph 049 of the PPG.

7. The Council contended that it was not seeking tariff-style planning obligations on the basis that the requested financial contributions would be CIL compliant and allocated to specific local projects. This argument might have had some validity, was it not for the fact that contributions were formula based and reliant upon pooling for delivery. The Council paid insufficient regard to Government policy, as set out in the Written Ministerial Statement of 28 November 2014 (and subsequently translated into the PPG) and its clear intention to reduce the disproportionate burden of developer contributions on small-scale developers. This failure amounts to unreasonable behaviour.
8. It is put to me that the Council's planning balance was flawed. The officer report indicates that the 'tilted balance' was undertaken, as per the first limb of the final bullet point in paragraph 14 of the National Planning Policy Framework. Although the correct approach is to apply the second limb of this bullet point, the method adopted did not disadvantage the appellant and as such it was not unreasonable.
9. Despite suggestions to the contrary, there is no evidence of any failure on the part of the Council to act co-operatively. Thus I do not consider that the appeal was avoidable in its entirety. However, unreasonable behaviour has been demonstrated in respect of the third and fourth reasons for refusal. The appellant's costs in preparing evidence in relation to these parts of the appeal were therefore unnecessarily incurred and a partial award of costs is justified.

Costs Order

10. 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 North Devon District Council shall pay to Mr George Thomas, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in connection with the third and fourth refusal reasons relating to surface water drainage and financial contributions respectively.
11. The applicant is now invited to submit to North 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.

Robert Parker

INSPECTOR