
Costs Decision

Site visit made on 18 June 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

**Costs application in relation to Appeal Ref: APP/U1105/W/19/3223511
Harcombe House, Road from Harcombe Cross to Rhode Dene, Harcombe
DT7 3RN**

- 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 East Devon District Council for a full award of costs against Mr Richard Kiernan.
 - The appeal was against the refusal of planning permission for alterations & change of use to single dwelling & eight units of holiday accommodation without complying with a condition attached to planning permission Ref 7/89/99/P1711/00183, dated 22 November 1999.
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Decision

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

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. The appellant provided additional marketing evidence with the appeal documents that had not been previously considered by the Council. However, whether or not, in light of an earlier appeal decision at the site, the appellant should have submitted this information anyway, the main thrust of the appellant's case in respect of the loss of holiday accommodation at application stage was that these matters did not need to be considered.
4. I am satisfied that it was necessary for the appellant to introduce this type of evidence in rebuttal to the Council's reasons for refusal. Moreover, it did not change the proposal and so the appeal process was not being used to evolve the scheme as such. The evidence was submitted in good time at the start of the appeal process affording the Council and any interested parties opportunity to comment. In any case, the Council maintain that the evidence was inadequate to bring the proposal into compliance with the relevant policy so it is unlikely that earlier submission would have avoided an appeal and the associated expense.
5. The Council also allege that there has been no change in circumstances since the previous appeal¹ for the same proposal was dismissed in 2016. However, with regard to my first main issue concerning the location of the site, I have

¹ APP/U1105/W/15/3137366

found that material changes in circumstance have arisen that justify a deviation from the earlier decision.

6. Whilst that does not apply to the second main issue relating to tourism, the appellants case is based upon the introduction of new evidence that included substantive legal advice. Whilst I have not agreed with the appellant in that regard, pursuing an appeal in the context of such evidence was not unreasonable.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Bale

INSPECTOR