



Costs Decision

Site visit made on 20 August 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Costs application in relation to Appeal Ref: APP/P1133/W/19/3227485 Cypress, Thornley Drive, Teignmouth TQ14 9JH

- 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 Stan Rzezniczak for a full award of costs against Teignbridge District Council.
- The appeal was against the refusal of the Council to grant planning permission for a dwelling in land adjacent to Cypress proposed via planning application Ref 16/02976/FUL, dated 4 November 2016.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance ('PPG') explains, however, that costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.² That is relevant in this instance as the appellant argues that the Council failed to substantiate its objection to the development proposed based on reasonable justification, and consequently that the scheme should clearly have been permitted.³ In that context an application for a full award of costs on substantive grounds has been made, which I have dealt with separately to the merits of the development proposed.
3. The Council's reasons for refusing permission in their decision notice of 22 February 2019 are brief. The decision ultimately taken was contrary to the recommendation of Council officers, following a significant period of engagement with the appellant and revisions to the scheme (for a dwelling located within the existing built form of Teignmouth following an earlier grant of outline permission). There is no appeal statement from the Council, the minutes of committee meetings of 22 January 2019 and 19 February 2019 refer to a various issues, and the report of the intervening Members' site visit refers to its purpose as being to assess the effects of the scheme on the 'amenities of neighbours'.
4. The appellant further contends that there was 'no objective consideration of the technical matters [evidence in support of the proposal]', 'no acknowledgement

¹ Reference ID: 16-028-20140306.

² Reference ID: 16-032-20140306.

³ Noting PPG Reference ID: 16-049-201040306.

of professional advice' and a 'failure to demonstrate the 'high bar of significant and demonstrable harm'.⁴ It is evident that, regardless of the outcome of this costs application, the Council could have done more to explain their objections precisely and to substantiate their reasoning.

5. Members are not bound to accept the recommendations of their officers, though must act rationally on the basis of valid material planning considerations in doing so. Nevertheless effects on character and appearance, and also living conditions or amenity, are inevitably matters of planning judgement. The planning system is designed to enable a balanced view to be taken in that respect, with regard to all representations made. There is nothing of substance to support the appellant's contention that the Council was unduly or inappropriately swayed by local opposition in that context; as a matter of planning judgement I dismissed the appeal based on the adverse effects to character and appearance that would result. An amended scheme is not synonymous with an acceptable one.
6. In itself 'overdevelopment' is, I accept, nebulous. However the Council also refused permission for the development proposed on the basis of what they considered to be insufficient ability in practice to undertake appropriate landscaping. Moreover the decision notice refers only to LP policy S2 'Quality Development', which states that new development should be of high quality design, specific to the place in which it is to be located, thereby integrating appropriately with surrounding character. LP Policy S1, criterion (e) of which deals with effects on neighbouring residential amenity, is not referenced.⁵ In both instances the minutes of planning committee on 22 January 2019 and 19 February 2019 record the principal public objection to the scheme as being 'design out of keeping and unsympathetic...'. Given the history of revisions to the scheme over two years, the appellant would have been aware that the design and relationship of the scheme to its surroundings were critical.
7. The appellant's points set out in paragraph 4 do not bear scrutiny. The Council's officer report refers to various technical information, including in respect of land stability and landscaping prepared after the application was initially made. Committee minutes of 19 February 2019 specifically refer to the 'updates report'; the 'late representations/ updates' sheet referencing clarifications regarding the original officer report and assessment undertaken as regards drainage provision.⁶
8. Planning should operate proportionately and proactively. However as set out in the associated appeal decision LP policy S2 aligns with the approach in NPPF paragraphs 127 and 130, and there was no substantive evidence to indicate other than that the Council were able to demonstrate a five year land supply of deliverable sites (in accordance with NPPF paragraphs 67 and 73). Therefore the provisions of NPPF paragraph 11(d)(ii) were not engaged, which contain 'significantly and demonstrably' provisions.

⁴ Appellant application for costs, paragraphs 2.10, 2.2 and 3.2.

⁵ Nor is policy EN2A 'Landscape Protection and Enhancement', albeit that criterion (a) of which broadly reflects the approach in policy S2.

⁶ The initial officer report containing reference to representations indicating that the appeal site fell within the Undeveloped Coast.

9. Were the decision notice or minutes to stand alone, that is at the threshold of what may constitute unreasonable behaviour (and I accept that the appellant has inevitably incurred some time and expense in pursuing the appeal, notwithstanding the outcome). However they followed a long period of discussions, revisions to the scheme, objections from those nearby related to character and appearance, and two airings of the proposal at committee.
10. In that context, although I appreciate the appellant's position, with regard to the approach in the PPG it has not been demonstrated that inappropriate behaviour resulting in unnecessary or wasted expenses has occurred in this particular instance. With that in mind, and with reference to the development plan context set out above, in my view the Council's opposition to the current scheme was reasonable and founded on appropriate judgement.

Conclusion

11. Having taken account of all other matters raised, I therefore conclude that no action or inaction taken by the Council in this instances amounts to unreasonable behaviour resulting in unnecessary expense. Accordingly, and with reference to the approach in the PPG, an award of costs is not justified.

Thomas Bristow

INSPECTOR