
Costs Decision

Site visit made on 9 August 2019

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th September 2019

Costs application in relation to Appeal Ref: APP/K1128/W/19/3230262 Landfall, Court Wood, Newton Ferrers PL8 1BW

- 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 & Mrs Hansford for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of outline planning permission for demolition of existing derelict self contained annex and replacement with detached dwelling (resubmission of application no. 4105/17/OPA).
-

Decision

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

Reasons

2. 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 the party applying for costs to incur unnecessary expense in the appeal process. Paragraph 031¹ of the PPG sets out that unreasonable behaviour in the context of an application for an award of costs may be substantive, relating to the issues arising from the merits of the appeal.
3. The applicants have applied for costs on the basis that the two grounds for refusal are not supported by objective analysis and could have been dealt with by details at the reserved matters stage and this amounts to unreasonable behaviour by the Council.
4. The Council refused the application subject to this appeal on the grounds of its impact on neighbouring occupiers of Amity Lodge and because the proposed dwelling would generate additional traffic movements including turning onto Lower Court Road.
5. With regard to the first reason for refusal, the Council relies on its Officer's report, which provides an analysis of the impact of the development on the neighbouring property. While the application was made in outline, with all matters reserved, it is nevertheless necessary to consider whether the proposed development could be accommodated within the site without resulting in unacceptable harm. Therefore, even though matters of design, layout, scale, access and landscaping are reserved, an application will still

¹ Paragraph: 031 Reference ID: 16-031-20140306

require a basic level of detail on these issues. Based on the nature of the information submitted as part of the application, and taking into account the constraints of the site, it was not unreasonable of the Council to arrive at a view that there was likely to be harm to the living conditions of neighbours, thereby resulting in the refusal of the outline scheme.

6. It will be seen from my decision that I agree with the Council's conclusions in respect of the likely overlooking arising from the proposed development based on the indicative sketches. In coming to my decision, I considered whether alternative designs could be achieved but none were put to me and, taking into account the site constraints, I was not persuaded that an alternative option for the design of the building would be able to overcome this harm. It therefore follows that I am satisfied that the Council has shown that it has undertaken an objective analysis of the proposal's impact and that I do not find the Council's behaviour unreasonable in considering this level of detail at the outline stage.
7. The Council's second reason for refusal related to the impact of the development on traffic and highway safety. I acknowledge that this was not a reason for refusal for the first application. However, at the time the Council decided the second application, the Newton and Noss Neighbourhood Plan 2017-2034 (the Neighbourhood Plan) had been made and therefore formed part of the development plan. The policy circumstances had consequently changed and it was therefore appropriate that the Council considered the proposal in terms of the policies set out in the Neighbourhood Plan. Irrespective that the Parish Council of Newton and Noss raised no issue with the proposal, although I note that response was subsequently withdrawn, it fell to the Council to determine the application in accordance with the development plan, which they did.
8. The applicants consider that the delay in the process by submitting a second application led to the adoption of the Neighbourhood Plan and the requirement to provide a report on highway matters. The first scheme was refused on 13 February 2018 and the applicants resubmitted their proposal on 17 August 2018. From their Planning Statement, it is clear that they were aware that the Neighbourhood Plan would be made by 23 August 2018 and therefore would form part of the development plan. The timing for the resubmission of their proposal was a matter for the applicants.
9. I consider the Council has behaved reasonably in determining the application in accordance with the development plan policy in force at the time of it made its decision.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not occurred. An award of costs is therefore not justified.

Rachael Pipkin

Inspector