



Costs Decision

Site visit made on 27 August 2019

by Christopher Butler BA (Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Costs application in relation to Appeal Ref: APP/X1165/W/19/3227811 2 & 4 Fore Street, St Marychurch, Torquay TQ1 4NE

- 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 Raymond Bishop (OJ Developments Ltd) for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for alterations and change of use to three of ground floor level units at 2-4 Fore Street with A1/A2 in unit 1, A1 in unit 2 and allowing for A1, A2, A3, A4 and A5 combined use in unit 3. Alterations to include three-storey extensions, dormers and conversions of upper floors of No.2 and 4 Fore Street to form 4 residential units. Conversion and upper floor extension to the rear of No.4 Fore Street and erection of 2-storey extension consisting of 1 residential unit with parking provision.
-

Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant's application for costs relies to a substantial extent on: i) The fact that they sought pre-planning advice from the Council; and ii) They experienced difficulties in discussing the proposed development with the Council during the pre-application and application process, which the appellant alleges resulted in the Council misunderstanding key considerations and conditions on site.
4. Whilst I note the above points, informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. Indeed, the first full paragraph of the Council pre-application advice letter (DE/2018/0049) dated 16 May 2016, clearly states "*The advice represents officers' informal opinion based upon the information you have provided. It is given without prejudice to any decision the Council may make on any subsequent formal planning application.*" In terms of material factors the pre-application advice letter included reference to the National Planning Policy Framework and Development Plan policies, in place at the time that advice was given, as well as other relevant material considerations. As such the informal advice given was not misleading and was clearly given on a without prejudice

basis and does not amount to unreasonable behaviour on the part of the Council.

5. The appellant has also expressed concerns regarding a lack of communication with the Council during the pre-application and application process. Whilst this must have caused the appellant some concern, I find nothing to suggest that a decision was not reached on the basis of the merits of the proposal.
6. Although a meeting with Council officers may have resolved some of their concerns by clarifying any misunderstandings / confusion about the nature of the surrounding properties, it would not have resolved all of their concerns. Whilst I appreciate that the outcome of the application will have been a disappointment to the appellant, the Local Planning Authority were not unreasonable in coming to their decision, and indeed following consideration of the application on its merits alone, I have concurred with the Council.

Conclusion

7. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Christopher Butler

INSPECTOR