
Costs Decision

Site visit made on 8 October 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Costs application in relation to Appeal Ref: APP/X1165/W/19/3226831 Land to rear of Broadway, Dartmouth Road, Brixham TQ5 0LH

- 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 A Davis of ADPAD for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for reserved matters relating to P/2015/0097 (development of up to 10 dwellings and associated infrastructure with all matters reserved other than access.) Tenth unit only.
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Decision

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

Reasons

2. Planning Practice Guidance (the 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. Parties in planning appeals and other planning proceedings normally meet their own expenses.
3. The PPG includes examples of unreasonable behaviour, by planning authorities. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
4. In respect of the first reason for refusal provided by the Council, I find that the information contained within the officer's report to have been well constructed and comprehensive in terms of describing the area surrounding the appeal site and understanding how the proposed development would integrate into the area. I further find that the report provides clear and understandable reasons to substantiate the refusal on the grounds that the development would have the potential to result in pressure to remove, top or lop the protected trees adjacent to the proposed residential unit, with reference to the findings of the Council's Arboricultural Officer.
5. Whilst it will be seen from my decision that I have concluded that the living conditions of future residents would not be significantly harmed due to overshadowing from the nearby protected trees, I found that it was reasonable for the Council to consider the effect that the development would have with respect to potential removal, topping or lopping of protected trees.

6. In this regard, following the Council's refusal to grant planning permission, the appellant provided a tree report which provided confirmation as to how these trees would be protected and that by a cycle of regular pruning, the separation distance between the proposed unit and the trees would be maintained thereby removing any need to have these lopped or topped. As such, this information was not before the Council when they made their decision to refuse planning permission. Therefore, I conclude that the Council have not acted unreasonably in relation to the first reason for refusal.
7. With regards to the second reason for refusal, it will be noted from my decision on the main issues that I have concluded that the proposal would not result in significant harm to the living conditions of future residents and that the proposal would make best use of the available space, both in accordance with the provisions of the development plan.
8. However, the applicant's response in relation to the second reason for refusal is straightforward and does not appear to have involved extra assessment or, indeed, anything beyond a short rebuttal. Therefore, it seems to me that, in reality, there has been so little extra work involved in responding on this matter, that it can be regarded as 'de minimis'. In effect the applicant has quickly and easily rebutted the Council's position without wasting expenditure.
9. For the reasons above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Spencer-Peet

INSPECTOR