



Costs Decision

Site visit made on 28 November 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Costs application in relation to Appeal Ref: APP/F9498/X/18/3233040 Orchard View, Rodhuish, Minehead TA24 6QZ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Tracy Stevens for a full award of costs against Exmoor National Park Authority.
 - The appeal was against the part refusal of a certificate of lawful use or development for the stationing of a caravan for holiday letting purposes.
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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 contends that the local planning authority has acted unreasonably in respect of several issues, namely that they have:
 - clearly prevented and delayed development which should be permitted;
 - failed to provide evidence to substantiate each reason for refusal on appeal and made vague or inaccurate assertions about the proposal's impact;
 - acted contrary to well-established case law;
 - imposed a condition that is not necessary, relevant to planning and the development to be permitted, enforceable, precise and unreasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations; and
 - has not reviewed their case promptly following the lodging of the appeal against a refusal of planning permission, or an application to remove or vary one or more conditions, as part of a sensible on-going case management.
4. I shall deal with each of these, in turn.
5. With respect to the contention that the Exmoor National Park Authority (ENPA) has clearly prevented development that should have been permitted it seems to me from the evidence presented by the appellant that her argument is based on human habitation in accordance with Section 1(4) of the Caravans sites and

Control of Development Act 1960. However, in this case the proposal for which the lawful development certificate was sought is for the retention of the caravan for holiday letting purposes. The ENPA's evidence is clear that the application was determined under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). The evidence is that the ENPA's decision to partially refuse to grant the certificate was sound as is demonstrated by my decision to dismiss the appeal. Therefore, I am not convinced that their decision prevented or delayed development that should have been permitted.

6. In a case such as this the burden of proof rests with the appellant and the relevant test of the evidence is the balance of probabilities. I agree with the ENPA's conclusion that on the balance of probabilities the evidence does not satisfactorily prove that the caravan has been used for holiday letting purposes for a period of not less than ten years leading up to the date the application for a certificate of lawful development was made (26 February 2019).
7. In coming to my decision I have taken account of the consideration that seasonal breaks may occur with respect to holiday letting, but that does not overcome the concern I have in terms of the discrepancies in the evidence provided by the appellant.
8. The evidence submitted by the ENPA demonstrates satisfactorily that relevant matters were taken into account in determining the application. The appellant has referred to a single piece of legislation (the Caravan Sites and Control of Development Act 1960), but that does not take precedent over the primary legislation in this case which is the 1990 Act. The ENPA has not acted unreasonably in determining the appeal and have demonstrated the legislative basis for their decision.
9. The appellant's contention that the ENPA have imposed a condition that fails to meet the necessary tests is misguided as far as I can see. There are no conditions imposed on the decision and it would be wrong for the local planning authority to attach conditions to the grant of a certificate of lawfulness in any case. The questionnaire has been completed correctly in this case because the appeal does not relate to a planning condition, but rather a certificate of lawfulness.
10. I understand that the appellant is frustrated with the Council's decision and, in particular, the communication between her and the ENPA during the application and appeal process. I understand that there was an administrative error relating to the plan attached to the certificate, but that was replaced when the error was identified. Although I agree with the appellant that greater care should have been given by the local planning authority, that does not constitute unreasonable behaviour.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A A Phillips

INSPECTOR