

Costs Decision

Site visit made on 15 December 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Costs application in relation to Appeal Ref: APP/X1165/W/19/3237090 Builders Yard, Blagdon Road, Paignton TQ3 3YA

- 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 R Davis for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for erection of new commercial buildings for use in association with lawful use as a builders yard following the demolition of the existing buildings.
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Decision

1. The application for 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 applicant alleges that the Council failed to properly consider the lawful use of the site and weigh this as a material consideration in the determination of the appeal application.
4. It would appear that the Council has treated the appeal proposal as the introduction of a new commercial use in the countryside, outside of an area where such development is normally permissible under the policies of the Torbay Local Plan 2012 – 2030 and Paignton Neighbourhood Plan. However, the site benefits from a certificate of lawfulness for use as a sui generis builders yard and its redevelopment should be treated in the context of this lawful fallback position.
5. I note that both parties submitted opposing views as to whether the proposal constituted a material change of use. The applicant has addressed this issue through the submission of the certificate of lawfulness and in the Statement of Case. However, it does not appear that the expenses put towards addressing this issue are onerous given the brevity with which it is covered and the fact that it has not required the commissioning of any specialist evidence.
6. The applicant also indicates that the fourth and fifth reasons for refusal, relating to tree protection and biodiversity mitigation measures, could have been addressed by condition and that the case officer sought agreement to the wording of the conditions in these regards. Whilst the use of planning conditions is necessary to enable development to proceed where it would otherwise have been necessary to refuse planning permission, for reasons highlighted in my decision based on a precautionary approach, I do not

consider that such conditions would be sufficiently precise in the absence of baseline assessments to ensure the protection of the trees or biodiversity value in this case.

7. I note through the exchange of correspondence between the parties that the Council alluded to a positive recommendation of the proposal, subject to conditions. Following a delay, a formal decision was reached by the Council to refuse the application. Whilst I can understand the applicant's frustration that the Council's opinions of the scheme appeared to waver and that the decision took some time to reach, there is nothing to suggest that the formal decision of the Council was based on anything other than the merits of the case. For the reasons expressed in my decision, the appeal was not altogether avoidable and there appeared to be limited opportunities for narrowing the areas of disagreement.
8. Consequently, whilst I have a degree of sympathy for the applicant in relation to the delays incurred, based on the information before me, there is no substantive evidence that demonstrates that the Council has behaved unreasonably. Council has behaved unreasonably or, even if it did, that unnecessary or wasted expense has been incurred.
9. For the above reasons, an award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR