
Costs Decision

Site visit made on 9 December 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Costs application in relation to Appeal Ref: APP/J9497/W/19/3236517 The Chalet, Belstone, Okehampton, Devon EX20 1QZ

- 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 Justin Davies for a full award of costs against Dartmoor National Park Authority.
 - The appeal was against the refusal of planning permission for removal of existing chalet and construction of timber replacement.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) 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 application for an award of costs is based on the perceived failure of the authority to understand, and apply, the effect of the Certificate of Lawful Development (CLD) that had already been granted for the existing chalet on the site. As a result of this alleged failure, it is contended that the authority did not give due consideration to a fall-back position that was material to the determination of the application. Furthermore, it is argued that this resulted in the refusal of the application, when proper consideration could only, reasonably, have resulted in the grant of planning permission.
4. The PPG indicates that local planning authorities will be at risk of an award of costs being made against them, if they prevent or delay development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. It is a fact that a CLD exists for the residential use of the existing chalet. The resultant implications for the appeal proposals were not, however, agreed between the parties. The appellant claimed that the CLD allows the chalet to be occupied as a permanent dwelling, so the authority should not have considered the appeal against policies for a new dwelling in the countryside. The authority, however, considers that the CLD allows residential use of the chalet, but not as a C3 dwellinghouse. The effect of the CLD is a matter of judgement, on which the parties differ. I did not find it necessary to make a finding on this difference in my decision, but the authority's position was not unreasonable, as it had already expressly refused a CLD for a C3 dwellinghouse.

6. It is evident from the Officer's report that the decision-maker was aware of the CLD and its implications, from the authority's perspective. In view of the planning history of the site, the officer logically concluded that the chalet did not have a lawful C3 use. Conversely, she considered that the larger, more habitable, replacement chalet would constitute a C3 dwellinghouse, and therefore represented a new dwelling in the countryside. In the light of these conclusions, the authority's decision to refuse the application was entirely logical, based on development plan policies. In my decision, I determined that the replacement building would not amount to a C3 dwellinghouse, but it was not unreasonable for the authority to conclude as it did.
7. Although the authority considered the development to be for a new dwelling, the Officer's report also discussed the alternative proposition that the building could be assessed as replacement holiday accommodation. From this viewpoint it was concluded, albeit briefly, that the proposals would not lead to an improvement in the character and appearance of the locality, as required by the relevant development plan policy. Again, I have come to a different conclusion in my decision, but this does not mean that the authority's determination was unreasonable.
8. In conclusion, the authority refused a planning application for a proposal that it considered to be contrary to development plan policy. I have come to a different view, based on a subjective judgement of whether the proposed replacement building constitutes a new dwelling in the countryside. The PPG advises that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR