
Costs Decision

Site visit made on 21 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Costs application in relation to Appeal Ref: APP/Y1138/W/19/3239009 Land and Buildings at West Manley Lane, Tiverton, Devon EX16 4NH

- 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 Jason Farrant for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal of planning permission for the erection of a dwelling and detached garage with associated access, drainage infrastructure and landscaping works.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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 process¹.
3. The Council's decision sets out three reasons for refusal: principle of development, character and appearance including the effect of the proposal on heritage assets and absence of detailed information in relation to archaeology.
4. The Applicant maintains that the Council have acted unreasonably in respect of delaying a development which the Applicant contends clearly should have been permitted and that the Council refused planning permission on a planning ground which could have been adequately dealt with by the imposition of a condition. In regards of these issues, I shall consider each in turn with reference to the relevant reason for refusal as provided by the Council in their Decision Notice.
5. In relation to the first reason for refusal, the Council maintains that the appeal site is located within an area which has been allocated for green infrastructure under the provisions of the Masterplan Supplementary Planning Document (the MSPD). Whilst the Council acknowledges that the appeal site has been allocated for mixed use within adopted policies of the Mid Devon Allocations and Infrastructure DPD, the Council contends that the provisions of the MSPD is a consideration which would warrant departure from the development plan.

¹ Paragraph: 030 Reference ID: 16-030-20140306

6. As will be seen from my decision in relation to the appeal, I have found that, in this instance, the appeal site is not located within an area which the MSPD has designated for green infrastructure, but rather that the site falls within an area which has been allocated for mixed use within the Tiverton Eastern Urban Extension. As such the principle of development at the site is supported by both the provisions of the development plan and the contents of the MSPD.
7. Whilst I have therefore agreed with the Applicant's view that the principle of development at the site is acceptable, the Applicant's response to this reason for refusal is straightforward, and does not appear to have involved extra assessment or, indeed, anything beyond a short rebuttal which refers to the sections of the MSPD which would indicate support for the proposal at this location. Therefore, it seems to me that, in reality, there has been so little extra work involved in responding on this particular 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.
8. In respect of the second reason for refusal, it will be seen from my decision that I have concluded the appeal scheme would result in harm to the character and appearance of the surrounding area, and would result in less than substantial harm to a heritage asset, namely the Blundell's Conservation Area.
9. In this regard, I find that the Council's Officer Report was concise, and clearly identified the harm which would result from the proposed development with respect to the design of the proposed dwelling and its impact on the character and appearance of the surrounding area and its impact in relation to the setting of heritage assets. Whilst I do not agree with the Council that the appeal scheme would result in harm to the significance or setting of a nearby Grade II Listed Building, and would not have a harmful impact on the setting of the Grand Western Canal Conservation Area, in my view there would be harm to the setting and significance of the Blundell's Conservation Area which would not be outweighed by public benefits arising from the scheme.
10. I note that the Applicant maintains that the Council's Conservation Officer indicated that the appeal scheme would not be harmful to the relevant heritage assets. However, in my view the comments from the Conservation Officer are clear in that whilst there may not be any harmful impact in relation to the setting of the nearby Listed Building or in relation to the setting of the Grand Western Canal Conservation Area, the proposal would result in harm, which could be described as less than substantial in terms of the National Planning Policy Framework, to the Blundell's Conservation Area. As such I conclude that the Council have not acted unreasonably in relation to the second reason for refusal.
11. The third reason for refusal relates to insufficient archaeological information in support of the appeal scheme. In this regard, the Applicant maintains that there was no reason to suggest that the appeal site was of high archaeological potential.
12. However, I again find that the Council's Officers Report was clear and concise in relation to this matter, and given that remains of buildings at the appeal site could have dated from the 16th century, the Council's Historic Environment Team concluded that additional information was required in order to ascertain whether the site was of high archaeological value.

13. In this respect, and following the issue of the Council's decision notice, the Applicant provided an Archaeological Evaluation. The evidence before me indicates that the Council's Archaeologist confirmed that the Archaeological Evaluation provided sufficient information and that, subject to certain conditions, this reason for refusal had been overcome.
14. I therefore conclude in respect of this issue and the third reason for refusal given by the Council, that without the Archaeological Evaluation undertaken following the refusal of planning permission, it would not have been possible for the Council to assess what impact the proposal may have had on archaeology. Consequently, I find that the Applicant was not put to unnecessary or wasted expense in this regard.
15. In conclusion, I find that the Council has not acted unreasonably in the appeal process and the Applicant has not been put to unnecessary or wasted expense. Accordingly, an award of costs is not justified.

A Spencer-Peet

INSPECTOR