
Costs Decision

Site visit made on 22 June 2020

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 July 2020

Costs application in relation to Appeal Ref: APP/K1128/D/20/3244334 Summerleaze, Drake Road, Salcombe TQ8 8EG

- 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 Ms Lucinda Davies for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for roof extension and alterations to front, side and rear (resubmission of application ref – 2098/18/HHO).
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an 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.
3. The applicant has made an application for a full award of costs in relation to the Council's first refusal reason on the basis that officers were satisfied that the proposal was unlikely to give rise to significant overlooking; its second refusal reason that introduced a matter that was not a main issue of the previous appeal²; and the relevancy of planning policy in relation to the second and third refusal reason.
4. In relation to the Council's first refusal reason members were advised by officers that they considered the proposal to satisfactorily address the previous Inspector's concerns regarding loss of light and privacy to the neighbouring property. It is however not unreasonable for elected members to take a different view to officers, and, although there is no evidence before me to substantiate the member's views, the appeal is dismissed on the basis of this main issue. Therefore, I do not consider refusing the proposal on this basis to be unreasonable.
5. The Council's second refusal reason relates to the effect of the proposal on the character and appearance of the area. The previous scheme could be considered identical to the current proposal in terms of its effect on the character and appearance of the area. However, this was a not matter included

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

² APP/K1128/D/18/3213974

within the earlier refusal, or a main issue of the previous appeal. With reference to the PPG I consider that the Council acted unreasonably in this respect by not determining similar cases in a consistent manner.

6. In its second refusal reason the Council referred to policy DEV10 of the Plymouth & South West Devon Joint Local Plan 2014 – 2034 adopted 2019 (LP). I do accept that this Policy relates primarily to larger housing schemes, however the overarching aim of the Policy to deliver well designed housing and the objectives of part 1 of the Policy appear entirely related to the appeal proposal, which although a householder case is tantamount to a replacement dwelling. Therefore, I am satisfied that the Council's reference to this Policy was not unreasonable.
7. Similarly, the applicant suggests that Policy DEV32 of the LP is not relevant as it does not prohibit the removal of light to solar panels. Whilst I accept that the Policy does not specifically relate to the shading of existing solar panels its overarching aim is to secure the delivery of low carbon development across the plan area, which is relevant to the effect of the proposal on the operation of existing solar panels on third party land. Therefore, I am satisfied that the Council's reference to this Policy was not unreasonable.
8. I have found that the Council acted unreasonably in respect of not determining similar cases in a consistent manner. I also need to consider whether this unreasonable behaviour has resulted in unnecessary or wasted expense on the part of the applicant. It is clear that the applicant has incurred unnecessary or wasted expense by spending time and effort addressing the Council's second refusal reason. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Hams District Council shall pay to Ms Lucinda Davies the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred by the applicant in preparing their appeal evidence to address the Council's second reason for refusal.
10. The applicants are now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Tucker

INSPECTOR