



Costs Decision

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 October 2020

Costs application in relation to Appeal Ref: APP/W1145/X/20/3250364 Highford Farm, Higher Clovelly, Bideford, Devon EX39 5SA

- 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 Mr and Mrs B and S Kelly for a full award of costs against Torridge District Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for "use for donkey rides being ancillary to a mixed use for agriculture and the keeping of donkeys".
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Decision

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

Reasons

2. The Planning Practice Guidance (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 PPG states that it is "best practice for the local planning authority to have constructive discussions with the applicants for an LDC and, if it has any concerns, give the applicant the opportunity to amend the application before it is decided." The Applicants submit, at paragraph 1 of their costs application, that it was unreasonable for the Council not to have followed this best practice. They contend that had the Council raised its concerns about the impacts of traffic generation, parking demand and associated facilities before deciding the LDC, the additional material produced for the appeal could have been provided at application stage, potentially avoiding the need for the appeal.
4. The short answer to this point is that even if I were to find that the Council did behave unreasonably in failing to raise its concerns before determining the application, it is clear that the additional material produced for the appeal would not have addressed those concerns. This is evident from the Council's decision to continue defending its refusal of the application, even after the additional information had been submitted with the appeal. Earlier provision of this information would not, therefore, have avoided the need for the appeal.
5. It is also worth noting, in this context, that in order for a LDC to be granted under s.192 of the 1990 Act it is necessary for the Applicant to show, on the balance of probabilities, that the development would be lawful on the date of the application. Paragraph 53 of the "Award of Costs" section of the PPG explains that in LDC appeals, the onus of proof on matters of fact is on the

Appellant, not the local planning authority. The nature and extent of the evidence to be submitted in support of an application, or subsequent appeal, is therefore a matter for the Applicant.

6. With that in mind, I do not consider that the Council applied an incorrect evidential test (paragraph 2 of the costs application), or behaved unreasonably in failing to seek advice from the local highway authority or environmental health officers (paragraph 3 of the costs application). The Council was entitled to form the view that such evidence as was submitted by the Applicants did not discharge the evidential burden of demonstrating that the proposal would, on the balance of probabilities, be ancillary to the existing lawful use. There was no requirement for, or obligation upon, the Council to seek further advice.
7. For the same reason, I do not consider that the Council can fairly be criticised for having “relied on vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis” (paragraph 4 of the costs application). The responsibility for providing an accurate assessment of the proposal’s impact lay with the Applicants.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so an award of costs is not justified.

Jessica Graham

INSPECTOR