



Costs Decision

Site visit made on 3 September 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Costs application in relation to Appeal Ref: APP/Q1153/W/20/3252734 Challoch Bungalow, The Crescent, Crapstone PL20 7PS

- 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 P Gray of Charles Gray Limited for a partial award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for development of 3 four bedroom dwellings (pair of semi-detached and 1 detached), new access road and external works.
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Decision

1. The application for 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 goes on to state that, local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. The applicant has applied for a partial award of costs in relation to the second reason for refusal. It is claimed that as the appeal is almost identical to an earlier application and appeal which were not found unacceptable in respect of the mix of house sizes, it was unreasonable to introduce a new reason for refusal on these grounds. The two appeal proposals have some clear similarities but are separate proposals in their own right, submitted approximately one year apart.
5. The Council refutes that it has behaved unreasonably and suggests that the earlier application and appeal were determined in accordance with the Plymouth and South West Devon Joint Local Plan (JLP) (adopted 2019), relevant evidence from the 2011 Census¹ and SHMA² 2017 and on the basis of a new material consideration, in the form of the Supplementary Planning Document³ (SPD) (adopted June 2020). Whilst it was an emerging SPD during the consideration of the current appeal, it has since been adopted in June 2020.

¹ 2011 Census, Office for National statistics

² Strategic Housing Market Assessment Part 2 – Objectively Assessed Need for Affordable Housing (2017)

³ Plymouth and South West Devon Joint Local Plan Supplementary Planning Document (adopted 2020)

6. A mitigation measure to address any perpetuation of a housing imbalance from small schemes in the Thriving Towns and Village Areas was part of the emerging SPD during its production and would have been clear from the consultation versions of the SPD. I have seen little evidence that the applicant has engaged in the SPD production process to highlight the challenges that such a measure would present.
7. The SPD has been recently adopted which means that it is to be given full weight as a material consideration, aiding the implementation of the development plan policies referred to in the Council's decision notice. It can offer some degree of flexibility to allow for larger house types for which there is already an over-provision when compared to the 2011 ONS baseline, such as where other material considerations justify the size and type of housing proposed. In this case, there is an acceptance that the number and architectural composition of the scheme is more appropriate than a denser scheme of smaller houses. However, this does not avert the need to provide a S106 providing the relevant local occupancy criteria.
8. That the Council has refused permission against the current development plan and taking into account the other relevant material considerations is not a new or unusual phenomenon. As the decision maker, I am also required to do the same on the basis of the present situation. The policy circumstances have been evolving throughout the consideration of both appeal schemes and the issues with regard to the house size demographic is an issue of which the applicant was aware at a point in time before the refusal of the current scheme.
9. Consequently, I do not consider that the Council is unreasonable for determining the current appeal on the basis of the development plan, relevant evidence and other current material considerations. The reason for refusal was set out in the Council's decision notice and the material considerations have evolved but not without prejudicing the applicant who would have been aware of the evidence base and the direction of travel in the SPD.
10. Taking all factors into account, it does not appear that the costs application relates to any unreasonable behaviour by the Council in relation to the substance or its handling of the appeal application or appeal itself, and nor does it appear to me that an award of costs would be justified in either regard.
11. For the reasons set out above, I find that it has not been demonstrated that the Council behaved unreasonably and an award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR