
Costs Decision

Site visit made on 1 December 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Costs application in relation to Appeal Ref: APP/X1118/W/20/3258772 Little Ash, Chittlehampton, Umberleigh, Devon EX37 9QA

- 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 & Mrs R Nicholls for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of permission in principle for residential development of one dwelling with parking and garden.
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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 applicants contend that the Council's stance, that the proposed dwelling would be isolated, was contrary to case law established in the Court of Appeal¹. Furthermore, it is argued that the Council failed to produce objective evidence to support its reasons for refusal. It is also claimed that the Council sought to introduce a new issue at appeal regarding archaeology, which, it is argued, should not be a consideration at the first stage of a permission in principle application.
4. The PPG indicates that local planning authorities are at risk of an award of costs being made against them if they act contrary to, or do not follow, well-established case law. The Braintree case provided some clarity on the meaning of "isolated" in paragraph 79 of the National Planning Policy Framework (the Framework). However, when applying the principles of the case, whether a site for a dwelling is considered isolated or not will still be a matter of fact and planning judgment, depending on the particular circumstances of the case. I concluded that the site was not isolated, due to its location adjacent to an existing dwelling, and its proximity to the settlement. Nevertheless, in view of its separation from the built form of the village, it was not unreasonable for the Council to have come to a different view.

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610

5. The reference to “isolated” development was contained in a wider reason for refusal, which also related to a conflict with the settlement policies of the development plan. Whilst I did not agree that the development constituted isolated development, as described in paragraph 79 of the Framework, the Council’s evidence in support of the reason for refusal, as a whole, was clear and compelling. I concluded that the proposal would conflict with the settlement policies of the development plan.
6. The second reason for refusal stated that the inaccessibility of the site to services and facilities would lead to occupants relying on private transport. I concluded, on the evidence, that the routes from the site into the main part of the settlement were not conducive to sustainable transport options, so there would be such a reliance. I also found that the proposal would be harmful to the landscape setting of the village. It therefore follows that I am satisfied that the Council produced compelling evidence to substantiate all of its reasons for refusal.
7. The PPG indicates that local planning authorities are at risk of an award of costs being made against them if they introduce fresh and substantial evidence at a late stage, necessitating extra expense. In this regard, the archaeological issue was not a new matter. The Council’s decision notice carried an Informative note advising that, although not a reason for refusal, the potential for archaeological remains being present on the site should be addressed if an appeal was lodged.
8. The applicants did not follow the advice in the Informative note to procure an archaeological desk-based assessment, or a programme of intrusive investigation. They did not address the issue in their appeal submission, and only did so briefly in their final comments. Consequently, regardless of whether the matter needed to be addressed at the first stage of a permission in principle application, the Council’s actions did not lead to any additional expense for the applicants.
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