

Costs Decision

Site visit made on 23 November 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Costs application in relation to Appeal Ref: APP/K1128/W/20/3256923 Old Stone Barn with land at SX778426, Frogmore

- 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 C Grigg for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for associated operational development to allow for conversion of stone barn to flexible use (cafe) as consented under prior approval 0189/19/PAU, including change of use of land to provide extended curtilage and associated access, parking, turning and landscaping.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance 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 appellant essentially claims that the Council has hurriedly assessed the appeal application, failing to properly scrutinise the submission in comparison with the previous scheme and in light of the previous appeal decision¹. It is claimed that the Council has simply repeated earlier reasons for refusal and added additional reasons which do not stand up to scrutiny. The appellant concludes that the appeal could have been avoidable had the Council taken the time to examine the proposal properly and sought to work proactively with the appellant.
4. The Council's response sets out that negotiations were not explored as they would not have overcome its concerns and would have only put the applicant to wasted expense. It also sets out that the identification of other policies and considerations was as a result of the earlier appeal decision which drew attention to them. In short, the Council does not accept that the issues could have been mitigated or the appeal avoided, nor does it accept that unreasonable behaviour, either procedural or substantive, has been demonstrated.
5. In respect of landscape character and appearance effects, it is clear that the Council was aware of the revisions that had been made since the previous scheme but that it was not felt that they had gone far enough to protect the landscape character and appearance, given the great weight that the

¹ APP/K1128/W/19/3235270 dated 7 February 2020

conservation of the designated landscape is to be afforded. Whilst my colleague identified harm in relation to the previous scheme, and the appellant suggests that the revisions have been informed by his inferences about how such harm might be minimised, the Council was not bound to accept these conclusions. The Council has adequately justified its views in respect of landscape harm and provided appropriately detailed evidence. There is also a degree of subjectivity in the assessment of landscape character and visual changes.

6. In respect of the flood risk reason for refusal, I note that a submitted Flood Risk Assessment offers some reasoning as to the selection of the site in the context of the sequential test required by the Development Plan and National Planning Policy Framework. However, the selection of the site itself has not been informed by the sequential process so much as it has been dictated by the location of the building and extant prior approval. Whilst I have attributed more weight to these considerations, this does not mean that the Council was bound to do the same. I do not consider that the Council's lack of request for more information of this nature amounts to unprofessional or unreasonable behaviour.
7. In terms of the location of the development, its encouragement of car dependency and non-compliance with, in particular, Local Plan² Policies TTV26 and DEV15, I share some sympathy with the appellant in the lateness of the identification of these additional issues. Given that there has not been a material change in the policy considerations in between the earlier appeal and the current scheme, the Council relies on the fact that these matters were highlighted by my colleague in the previous appeal decision, rather than them being entirely new and unexpected.
8. Having reviewed the appellant's statement of case, the substantive material addressing these aspects amounts to a relatively limited range of pages. Whilst I have no doubt that this has required more time being expended on the preparation of the case, it has not required any additional specialist or technical evidence to be produced. The alternative views put forward regarding the compliance of the scheme with the aforementioned policies is unlikely to have taken considerable time and forms part of the submission of an appeal which, in my view, was not avoidable in any event.
9. The final strand of the appellant's claim for costs is that the Council has overlooked to assess the proposal in the context of Local Plan Policy DEV21 which relates to heritage assets, including non-designated heritage assets (NDHAs). The Council suggests that the reuse had already been secured by the GDPO prior approval in any case, thus not meriting further consideration. Whilst I have attributed weight to the proposal as a means of enabling the implementation of the reuse, I have still found the NDHA reuse benefits to fall short of outweighing the harm to the landscape, thus not altering the overall outcome in any case.
10. Though the overall assessment has resulted in balancing a range of factors, and this would have been made easier had the Council been clearer in its identification of the issues and policy considerations in relation to the third and fourth reasons for refusal, I am not persuaded that the conduct amounts to unreasonable behaviour or that the appeal could have been avoided.

² Plymouth and South West Devon Joint Local Plan 2014 – 2034 (adopted 2019)

11. Consequently, based on the information before me, there is no evidence to demonstrate that the Council has behaved unreasonably, either substantively or procedurally, in relation to its consideration and determination of the matter at either application or appeal stage.
12. For these reasons, and having regard to all other matters raised, an award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR