
Costs Decision

Site visit made on 5 January 2021

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Costs application in relation to Appeal Ref: APP/Q1153/W/20/3259929 Bickham Barton Bungalow, Roborough PL6 7BJ

- 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 Joseph Hess for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for a proposed new detached dwelling to replace existing bungalow.
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Decision

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

Reasons

2. Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the 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 in the appeal process.
3. The PPG includes examples of unreasonable behaviour by planning authorities. Amongst other things, this can include: preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan national policy and any other material considerations, vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, not determining similar cases in a consistent manner and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. With regards to determining similar cases in a consistent manner, the Appellant drew my attention to a number of proposals that has been previously permitted by the Council. While these matters have been noted by the Council within their submissions, the Council considers each site to be different and as such each application should be assessed on its own merits. In this respect, I have only been provided with very limited information regarding the cases cited by the Appellant and therefore cannot be sure that those proposals are comparable to the appeal scheme before me in terms of the scale and scope of those other applications and in relation to any resulting harm. I therefore find that the Council have not acted unreasonably in this regard.
5. The Appellant maintains that the Council has provided only vague, generalised or inaccurate assertions about the proposal's impact on the character and appearance of the surrounding area with regard to the Tamar Valley Area of

Outstanding Natural Beauty (the AONB) and that the Council have prevented or delayed development which should clearly be permitted.

6. However, the concerns regarding the appeal proposal's location and resulting impact on the AONB, in my view, was adequately substantiated by the Council in the Officer Report and the Appeal Statement, with the Council considering the appeal scheme against the policies of the development plan when taken as whole rather than assessing the proposal in light of single or separate policies only.
7. Although I found differently to the Council with regards to the weight to be attached to compliance or conflict with certain policies, on these matters it does not mean that the Council concerns had no basis, was wrong in its approach or subjective judgement regarding the consideration of the impact on the character and appearance of the surrounding area. The extent to which the proposed development impacts on the character and appearance of an area is a matter of subjective judgement and I find that the Council has not provided vague, generalised or inaccurate assertions or has prevented or delayed development which should clearly be permitted. I therefore find that the Council have not acted unreasonably in this regard.
8. Notwithstanding the above, the Appellant has also put it to me that the Council refused planning permission on a planning ground capable of being dealt with by conditions. While I have noted the Council's submissions with respect to a Section 106 planning obligation as set out in my decision letter, I see no reason why the concerns of the Council with regards to ensuring that there would be no net gain in the number of units and that no further replacement dwellings could be constructed at the existing bungalow site, could not be adequately controlled by a negatively worded condition. Since planning permission was refused on a planning ground capable of being dealt with by conditions, the Council has behaved unreasonably in this regard.

Conclusion

9. For the reasons outlined above, I conclude that the Council has acted unreasonably, and that the Appellant has incurred unnecessary and wasted expense in contesting the Council's second reason for refusal. Therefore, a partial award of costs is justified.

Costs Order

10. 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 on that behalf, IT IS HEREBY ORDERED that West Devon Borough Council shall pay to Mr Joseph Hess, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is 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.

Mr A Spencer-Peet INSPECTOR