



## Costs Decision

Site visit made on 4 February 2021

**by Mrs H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 March 2021

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### **Costs application in relation to Appeal Ref: APP/X1118/W/20/3259771 Guyscliffe Farm, Rectory Road, Combe Martin EX34 0NS**

- 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 Lugo and Mrs Greaves-Lugo for a full award of costs against North Devon District Council.
  - The appeal was against the refusal of planning permission for is conversion of barn to 1no. residential Holiday let and part conversion of barn to provide WC facilities for 28 day permitted development camping.
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### **Decision**

1. The application for costs is partly allowed in the terms set out.

### **Reasons**

2. Planning Practice Guidance 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 application for costs is largely based on the inconsistency between the pre-application advice and the final decision of the Council, with particular regard to the conversion of the smaller barn. The issue raised is whether the pre-application advice was misleading and whether the applicants have incurred wasted expense in the pursuit of a development which was unacceptable for a number of reasons not sufficiently highlighted at the pre-application stage.
4. Whilst the pre-application enquiry response issued by the Council does not explicitly say so, pre-application advice offered by Councils prior to the submission of a formal application is given on a without prejudice basis. It does not represent a formal decision of the Council or predetermine the outcome of the formal application. It can only reflect the nature of the proposal described, based on the information submitted at the time.
5. From the evidence, it does not appear that the pre-application documentation or plans were particularly detailed. The Council highlighted that further detail would be required and that the advice was partly caveated on this basis. However, there are a number of areas where the advice is affirmative where, given the nature of the reasons for refusal, it should have been more guarded and taken the opportunity to highlight concerns in relation to the relevant planning policies.
6. One particularly clear instance of this is in relation to the 'conversion' aspect of the proposal. The case officer's pre-application advice indicates that in relation

- to NDTLP<sup>1</sup> Policy DM27 (c): *"I understand point (c) is satisfied as the building will not be extended"*. The wording of the policy refers not only to extending but for the development to be achievable without significant external alteration, extension or substantive rebuilding. The Council has subsequently refused the conversion on the basis that it amounts to a substantive rebuilding and significant alteration. Despite the absence of plans forming part of the pre-application enquiry, I note that the case officer undertook a site visit and would therefore have been aware of the open-fronted and insubstantial nature of the existing agricultural building. As such, I consider that the decisiveness of the Council's advice on this point was misleading.
7. Similarly, the pre-application advice fails to mention that the proposal would be in conflict with the policies concerning the location of new tourism development. It also failed to highlight that the size of the building may not be capable of providing a satisfactory living environment for future holiday guests. The pre-application response is generally supportive in a number of areas, caveating only the design, appearance and highways matters.
  8. I note that the advice concludes that the camping aspect of the scheme would not be supportable, and the applicants appear to have only relied on the permitted development rights available in this regard. But the other advice of the Council was heeded and, based thereupon, it is of no surprise that the applicants chose to proceed with an application for the conversion.
  9. As such, I find that, whilst pre-application advice does not guarantee a positive outcome, the applicant was led to believe that the conversion aspect of the proposal was far more straightforward than was subsequently found to be the case. The application was refused for reasons that were not flagged up as potential issues despite them being apparent from a site visit and which were unlikely to be capable of being addressed. For these reasons, I find the pre-application advice to have been misleading in this instance.
  10. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

11. 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 in that behalf, IT IS HEREBY ORDERED that North Devon District Council shall pay to Mr Lugo and Mrs Greaves-Lugo, the costs of the appeal proceedings relating specifically to the conversion element of the proposal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to North Devon District 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.

*Hollie Nicholls*

INSPECTOR

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<sup>1</sup> North Devon and Torridge Local Plan (2018)