



Costs Decision

Site visit made on 1 March 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Costs application in relation to Appeal Ref: APP/Y1138/W/20/3264331 12 Kabale Close, Tiverton, EX16 5QB

- 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 G Wright for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal of planning permission for the erection of one detached dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant seeks a full award of costs on the basis of both procedural and substantive grounds. In summary, this is on the basis that consideration of the application was unreasonably delayed with the proposal being examined by the Committee on three separate occasions, in addition to a site visit, leading to a total of 27½ weeks before a decision was issued.
4. The case is also made that there was disregard of the planning officer's support for the application and the statutory consultation responses received, in particular the Highway Authority who raised no objections. This led to unnecessary and wasted expense in accordance with the Guidance.
5. The Council has explained, in summary, that it was perfectly reasonable for the application to be called into the Committee for consideration, that the Committee decided to visit the site and that an implications report was tabled so that there could be full consideration of the potential reasons for refusal. As a consequence, there was not unreasonable delay in the processing of the application.
6. In considering the substantive issues, the Council explain that while the decision did not accord with the advice of planning officers, that the Committee came to a different view on the merits of the proposal does not warrant an award of costs. The decision to refuse planning permission was taken following a full and thorough assessment of the development proposal, including a site visit by Planning Committee Members. The costs rebuttal explains that it was

considered appropriate for the Committee to challenge the consultation response from the Highway Authority as the comments did not address the Committee's concerns regarding the use of the driveway to serve the site and the parking area proposed for 12 Kabale Close. The Council make the case that it was therefore legitimate to arrive at a decision different from the Highway Authority and that the reason for doing so was clearly and reasonably articulated in the reasons for refusal.

7. Examining these matters, the Guidance explains that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The delay in determining the application was reasonably lengthy but not so prolonged that it constitutes unreasonable behaviour in the circumstances of this case, and did not add directly to costs or expense at the appeal stage.
8. The Guidance also gives examples of the type of behaviour that may give rise to a substantive award of costs against a local planning authority. This includes the failure to produce evidence to substantiate each reason for refusal, and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
9. The Committee is entitled to come to a different view from the officer recommendation so long as the reasons for refusal are based on an objective analysis which is supported by evidence. In this case, the first reason for refusal argues that the access would be unsuitable and refers to the alignment and width. It was acknowledged that the width would not meet the recommended standard and the entrance would be at an angle, but the County Highway Authority had specifically been asked to look at these matters and responded that the arrangements were acceptable in this case.
10. The Council, nevertheless, proceeded to refuse the application on this ground. At the appeal stage only general assertions regarding the unsuitability of the access drive were set out and the submissions did not address cogently the justification for departing from the advice of the County Highway Authority. No robust technical evidence or sufficiently detailed assessment was made which highlighted the harm that would result. Therefore, I consider that there was a failure to produce satisfactory evidence or provide an adequate level of objective analysis to substantiate this reason for refusal.
11. In terms of the second reason for refusal, concerning the level of disturbance for occupiers of the nearby residential properties from the access, again, there was little detailed assessment as to how the vehicle movements associated with 12 Kabale Close and the proposed dwelling would impact on the adjoining properties. The submissions were, in my view, vague and generalised and did not set out an adequate argument why the level of vehicle movements along the drive, which would be separated from the closest property by a garden area, could reasonably justify the refusal of planning permission. I therefore conclude that there has been a failure to produce satisfactory evidence or provide an adequate level of objective analysis to substantiate this reason for refusal.
12. While the Council has not acted unreasonably in terms of the procedural matters it did not produce a satisfactory level of evidence or provide an adequate level of objective analysis to substantiate either of the reasons for

refusal. In these circumstances, in terms of the substantive matters, the Council has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. This constitutes unreasonable behaviour. The appeal should have, therefore, been avoidable and the applicant was put to unnecessary and wasted expense in having to make the appeal.

13. In the light of the above analysis, I conclude that the Council has acted unreasonably and this has put the applicant to unnecessary and wasted expense at the appeal. Consequently, a full award of costs is justified in this case.

Conclusion

14. In the light of the above analysis, I have found that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Mid Devon District Council shall pay to Mr & Mrs G Wright, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Mid Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR