



Costs Decision

Site visit made on 22 March 2021

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2021

Costs application in relation to Appeal Ref: APP/K1128/W/20/3262724 Woodville, Pillory Hill, Noss Mayo, Devon, PL8 1ED.

- 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 Mrs Beryl Booth for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for a revised scheme to replace bungalow with a three-bedroom house incorporating a double garage and associated landscaping.
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Decision

1. The application is approved in the terms set out in the Order below.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but costs may be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Amongst other things, the costs regime is aimed at encouraging local planning authorities to properly exercise their development management responsibilities and to rely on reasons for refusal which stand up to scrutiny on the planning merits of the case. Examples of unreasonable behaviour by local planning authorities include failing to produce evidence to substantiate each reason for refusal, not determining similar cases in a consistent manner and refusing to enter into pre-application discussions that could have narrowed the issues between the parties and reducing the expense associated with an appeal.
4. At the end of the report of the Council's planning officer, reference is made to the Equalities Act 2010. I agree with the applicant that this does not demonstrate that when determining the application the Council took into account the Public Sector Equality Duty (PSED). There is no mention of this duty within the report and whilst the Council is no doubt very familiar with it, there is also no mention of any protected characteristic. This tends to support the appellant's argument that the Council failed to properly take this matter into account and acted unreasonably.
5. However, it would be going too far to say that the Council acted unreasonably by failing to respond to all of the matters raised in an email from the applicant's agent that was sent a week before the application was determined. This does not constitute a failure by the Council to enter into pre-application discussions and it was open to the applicant to have raised such matters at an

- earlier stage or to have requested that consideration of the application be deferred to a later date.
6. It is evident from the officer's report that the applicant's needs were considered. Moreover, it is clear to me that even if there had been discussions between the main parties on the PSED, the Council would have been very unlikely to have moved from its stance in respect of local needs housing. Within the appeal decision I found that this matter was finely balanced.
 7. In seeking to argue that the PSED weighed in favour of an approval it was incumbent upon the applicant to make submissions at the appeal stage. It was also the applicant's choice to seek legal advice on this issue. However, there is nothing of substance to support the argument that the Council's behaviour on the issue of local housing need resulted in unnecessary expense being incurred.
 8. The Council's evidence was largely based upon the contents of the officer's report. The issue of landscape impact is largely subjective. Whilst I found differently to the Council on this, the evidence it presented, including the consultation response from its Landscape Specialist, was sufficient to demonstrate that this was not a frivolous or unreasonable reason for withholding permission. The circumstances surrounding the replacement dwelling at The Old Workshop were different to the appeal scheme and there is nothing of substance to demonstrate that the Council acted inconsistently.
 9. In expressing concern over the impact upon the living conditions of the occupiers of Nymet (reason for refusal No.3) the Council failed to demonstrate how the proposal would have an overbearing impact upon the outlook from this neighbouring property. It was unable to substantiate its concerns on this matter. This unreasonable behaviour caused the applicant to incur unnecessary expense in responding to the Council's concerns on this issue.
 10. There was evidence before me to demonstrate that the appeal site forms part of the setting of the listed Church of St. Peter. However, there was nothing of substance to show how the site contributed to the significance/heritage interest of the church or how the proposed development would harm its setting. Moreover, the Council failed to adequately explain why, given the fallback position, the appeal scheme would result in a harmful impact. The Council acted unreasonably in withholding permission on the basis of alleged harm to the setting of the church and caused the applicant to incur unnecessary expense in responding to this reason for refusal (No.5).
 11. The Council's argument and evidence in respect of the proposed car parking provision also lacked substance. Although the Neighbourhood Plan had been made after the decision to approve a four bedroom dwelling on the site, in withholding permission on the basis of an alleged lack of off-street parking (reason for refusal No.6) the Council failed to have adequate regard to the fallback position and the advice of the Local Highway Authority. No evidence was produced to demonstrate that the proposed parking arrangements would be inadequate or result any problems/difficulties along the local road network. There was no sound basis for refusing permission on the basis of the proposed car parking. The Council therefore acted unreasonably and caused the applicant to incur unnecessary expense in responding to this issue.
 12. Given all of the above, I conclude that the Council acted unreasonably in withholding permission in respect of residential amenity, the impact upon the

setting of the listed church and car parking, and this caused the applicant to incur unnecessary expense. A partial award of costs is therefore justified.

Costs Order

13. 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 South Hams District Council shall pay to Mrs Beryl Booth the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred by the applicant in responding to the Local Planning Authority's reasons for refusal numbered 3 (residential amenity), 5 (listed building) and 6 (car parking).
14. The applicant is now invited to submit to South Hams 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Neil Pope

Inspector