
Costs Decision

Site visit made on 23 March 2021

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

an Inspector appointed by the Secretary of State

Decision date: 13 April 2021

Costs application in relation to Appeal Ref: APP/X1165/W/20/3264637 Quarry, Waterside Road, Churston with Galmpton, Paignton TQ4 6LJ

- 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 A Billings for a full award of costs against Torbay Council.
 - The appeal was against the refusal of outline planning permission for three new dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (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. The Applicant has submitted a costs application on a number of separate grounds, each of which I shall consider in turn below.
3. On the first of these grounds, the Applicant has put it to me that the Council failed to consider the application of a negatively worded condition with regards to access. Whilst it will be seen from the appeal decision that I concur that a negatively worded condition could have been applied in relation to the requirement that access of sufficient width be secured over adjoining land prior to commencement of development, the Council clearly considered that there was a high degree of uncertainty with regards to a claimed right of way over that adjoining land and that even if that right existed, it was not possible to determine whether that right would provide access of sufficient width onto Waterside Road.
4. In this regard, and in respect of the case of *Engbers*¹ as cited by the Applicant, it is apparent from the evidence before me that the Council did consider the application of a negatively worded condition, but reached a different view with regards the potential chances of the Applicant being successful in the related litigation regarding enforcement of that claimed right.
5. In respect of the reasoning provided by the Council with regards to access, the Council also had concerns regarding the width of the access into the site as well as concerns regarding the gradient of access. Whilst it will be seen that I have come to a different view within the appeal decision, I find that the

¹ *Engbers v SSCLG* [2016] EWCA Civ 118

information contained within the Council's officer report and statement of case to have been well constructed and comprehensive in terms of describing the concerns regarding the width of the access and in relation as to whether the scheme could comply with the requirements and recommendations contained within design guides and advice. Consequently, I do not find that the Council have acted unreasonably in this regard.

6. The Applicant has further put it to me that the Council has acted unreasonably by failing to request additional information regarding the appeal scheme's impact on landscape prior to refusing the application. In this respect, it is for the Applicant to consider what information they wish to include in order to support their application and, in this instance, given that the information which supports the contention that the proposal would not have a harmful effect on landscape matters would have been required as either part of the application process or the appeal procedure, I do not find that the Council have acted unreasonably in this regard.
7. Further to the above, the Applicant maintains that the Council have not determined similar cases, close to the appeal site, in a consistent manner and specifically in relation to the level of information concerning ecological effects. In this regard, each application must be determined on its own merits and, whilst I have considered all of the information provided, the Applicant's concerns that ecological assessments were not conducted in relation to those nearby sites does not set a precedent in relation to the appeal site. Such concerns would need to be considered as part of those separate planning applications. In respect of the appeal site, the ecological information would have been necessary given the sensitivity of the site and I, therefore, find that the Council have not acted unreasonably in this regard.
8. The Applicant also contends that the Council have acted unreasonably in failing to determine the application within an appropriate timeframe. In this regard, whilst I have sympathy for the Applicant in terms of the time taken to consider and determine the application, the submissions before me indicate that there was dialogue between the main parties during the application procedure and that time extensions were agreed.
9. Nonetheless, in the event that the Applicant had concerns about the time taken to determine the planning application, they could have appealed against non-determination once the application exceeded the statutory decision time. This did not occur. Furthermore, it was not the delay in the Council's decision that compelled the Applicant to appeal the decision but rather that there was disagreement regarding access and the impact of the proposal with regards to landscape. Therefore, whilst I have sympathy for the Applicant in the time taken for the Council to issue the decision, this did not result in unnecessary or wasted expense in the appeal process.
10. Further to the above, it is also noted that the Applicant considers that the Council have provided incorrect or erroneous facts about whether development on land adjacent to the appeal site, and through which the Applicant considers they have a right of way, had commenced or not. Whilst the details provided by both main parties has been carefully considered, whether that development had commenced or not, is outside the scope of the appeal in relation to the appeal proposal. Whether conditions attached to other development on other

sites have been satisfied or not is a separate matter and concerns about such matters would need to be addressed as part of those separate applications.

11. Whilst the Applicant's concerns regarding the responses and information provided in relation to a potential alternative access to be taken from Dartmouth Road are noted, it will be seen from the appeal decision that such matters were outside of the original planning application. While the Council appears to have demonstrated flexibility in terms of exploring other possible alternatives as part of its dialogue with the Applicant, the appeal has been determined on the basis of the application that was made to the Council.
12. In conclusion, I find that the Council has not acted unreasonably in the appeal process and the Applicant has not been put to unnecessary or wasted expense. Accordingly, an award of costs is not justified.

A Spencer-Peet

INSPECTOR