
Costs Decision

Site visit made on 6 April 2021

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2021

Costs application in relation to Appeal Ref: APP/K1128/W/20/3253743 Land on east side of New Road, Bickleigh, Plymouth, Devon, PL6 7AN.

- 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 and Mrs Hill for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for a proposal described as *the erection of a new dwelling of exceptional quality and design, landscape enhancements and associated works (para 79 house)*.
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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 all those involved in the appeal process to behave in a reasonable way and follow good practice and for local planning authorities to properly exercise their development management responsibilities by relying only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
4. Where planning permission is refused, local planning authorities decision notices should state clearly and precisely the full reasons for refusal, specifying all policies and proposals in the development plan that are relevant to the decision. Examples of unreasonable behaviour by local planning authorities include failing to produce evidence to substantiate each reason for refusal.
5. In refusing planning permission, members of the Council took a decision contrary to the advice of its officers and contrary to the views of the Design Review Panel (DRP). Members are not bound to accept the advice of its officers and, as set out at the end of the DRP's comments, the Council is not bound by the suggestions made by the DRP. The officers report appears to include a finely balanced recommendation and there is nothing of substance to indicate that members did not give the DRPs comments due weight. The remarks by one member of the Council are of a type commonly made during the 'rough and tumble' of a planning committee meeting.
6. Having carefully considered the proposal and all of the consultation responses, members were entitled to find differently to their officers. The Council did not act unreasonably by withholding permission on design grounds (first reason for refusal).

7. However, by failing to identify within its decision notice any conflict with the relevant development plan policies the Council acted unreasonably. The use of the phrase "*not sufficiently innovative*" within its decision notice also tends to support the applicants claim that members failed to correctly apply paragraph 79 of the National Planning Policy Framework. The lengthy delay in formulating the reasons for refusal and issuing its decision notice also suggests further unreasonable behaviour on the part of the Council.
8. Notwithstanding the above, the committee report identified the relevant policies and it is evident from the various reports and Statements submitted on behalf of the applicants that they were very clear from the outset as to the most important development plan policies. It would not therefore have come as a surprise to the applicants to subsequently be informed by the Council that it considered there to be conflict with the development plan.
9. Moreover, in submitting the appeal, the applicants arguments included consideration of those development plan policies upon which the Council later relied upon. The Council's behaviour in respect of the first reason for refusal (design) did not cause any prejudice or result in the applicants incurring any unnecessary or wasted expense. Moreover, there is nothing of substance to show that the Council's delay in issuing the refusal notice resulted in the applicants incurring unnecessary or wasted expense.
10. In expressing concerns over the impact upon local populations of bats (second reason for refusal) it was unclear why the Council considered that the applicants Ecological Impact Assessment, including bat mitigation, would be inadequate. The Council failed to substantiate its concerns on this issue and made inaccurate assertions about the likely impact upon bats. This amounts to unreasonable behaviour that caused the applicants to incur unnecessary expense in responding to this issue at appeal.
11. I conclude that the Council behaved unreasonably regarding the likely impact upon bats (second reason for refusal) and this caused the applicants to incur unnecessary costs. A partial award of costs is therefore justified.

Costs Order

12. 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 Mr and Mrs Hill the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred by the applicants in responding to the Local Planning Authority's reason for refusal numbered 2 (impact on bats).
13. The applicants are 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