



Costs Decision

Site visit made on 10 March 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Costs application in relation to Appeal Ref: APP/X1165/W/20/3259178 The Focсле, 54 Higher Street, Brixham TQ5 8HW

- 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 Perry for a full award of costs against Torbay Council
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for conversion of existing building comprising a maisonette and 2 flats into a single dwelling and construct a new self-build infill dwelling.
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Decision

1. The application for costs is allowed.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's claim for costs is advanced on the basis that the Council failed to determine the application within the prescribed timetable and did not communicate regularly during the extended determination period. The appellant indicates that the appeal process was, essentially, avoidable and that consequently, wasted costs have been incurred in having to submit the appeal and handle all related correspondence.
4. The PPG advises that behaviour and actions at the time of the planning application can be taken into account in consideration of whether or not costs should be awarded. From the evidence, it appears that the application was submitted a year before the site visit even took place and that there was scant correspondence from the Council to the appellant during that period. The delay and lack of proactivity on the part of the Council during the original statutory time period is alarming and took place before any disruption related to the COVID-19 Pandemic. The subsequent delays are easier to understand but still appear unreasonably lengthy relative to the complexity of the proposal.
5. I also note that the Council did not submit any putative reasons for refusal in relation to the appeal until a month after the prescribed timetable, which had further repercussions for the appeal timetable. Further correspondence was sought in relation to the suggested conditions which should also be provided as a matter of course. Such further delays were potentially avoidable.

6. The Council has indicated that the delays in processing the application related to high volumes of work, leave commitments from the respective case officers, the impacts of COVID-19 and the need to implement homeworking practices. It does however indicate that there was some degree of communication and collaborative working which is apparent from the submission of amended plans to show the bicycle and bin stores. The submission of an appeal against non-determination was eventually a surprise to the Council.
7. In relation to the substantive matter as to whether the appeal could have been avoided entirely, I am of the view that it could have been. Whilst there were concerns about the introduction of Juliet balconies, those proposed were discreetly sited and did not involve any projection beyond the dormer side wall. In any event, any tension with Brixham NP Policies that would have arisen through the introduction of the Juliet balconies in the dormer windows were readily addressed through the submission of amended plans. The appellant indicated that the Council did not seek to invite any amendments that may have overcome the anticipated harm to the Conservation Area but it is clear that there was a willingness to amend the scheme accordingly. This outcome and the prolonged determination period, combined with the finding on the substantive merits of the case, results in a finding of unreasonable behaviour.
8. The PPG indicates that awards of costs cannot extend to compensation for indirect losses, such as those which may result from a delay in obtaining planning permission. Nor can the costs application process direct the Council to return the planning application fee, although there is a separate process for that. However, I do find the behaviour of the Council unreasonable and of the nature described by the PPG. It has resulted in unnecessary and wasted expense in the submission and handling of the appeal and consequently justifies a full award of costs.

Costs Order

9. 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 Torbay Council shall pay to Mr Perry, the full costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Torbay 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