
Costs Decision

Site visit made on 26 April 2021

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

an Inspector appointed by the Secretary of State

Decision date: 11 May 2021

Costs application in relation to Appeal Ref: APP/U1105/W/20/3264784 The Big Office, Chubbs Yard, Chardstock, Axminster EX13 7BT

- 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 Ian Chubb for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for the proposed change of use of office building to single dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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 PPG states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Applicant is seeking a full award of costs in relation to substantive matters.
4. The PPG includes examples of unreasonable behaviour by local planning authorities. Amongst other things, this can include; preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal; vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and acting contrary to or not following well established case law.
5. The Applicant has put it to me that the Council has acted unreasonably in assessing the appeal proposal against Strategy 32 of the East Devon Local Plan 2013 – 2031 (the Local Plan) which it is maintained is out of date by reason of changes made to The Town and Country Planning (Use Classes) Order 1987 (as amended). In this regard, it will be seen for the reasons given in the appeal decision that I disagree that Strategy 32 of the Local Plan is out of date. Furthermore, the evidence before me indicates that the contention that Strategy 32 of the Local Plan was out of date was not raised by the Applicant during the Council's determination of the planning application and,

consequently, there would have been no reason for the Council to consider that contention as part of their assessment and determination of the planning application. I therefore find that the Council has not acted unreasonably in this regard.

6. The Applicant further maintains that the Council failed to adequately consider the conclusions of a recent appeal decision which reviewed the approach to be taken with regards the application of Strategy 32 of the Local Plan. It will be seen from the appeal decision that I agree with the two stage approach advocated by the Inspector in the cited appeal.
7. However, it is apparent from the evidence before me that the Council did consider the conclusions of the Inspector in the recent appeal, and further gave detailed reasons as to why they disagreed with those conclusions in respect of the present appeal given the circumstances in this particular case and which included reasoned opinions regarding the impact on demand for office space due to the Covid-19 pandemic. While it will be seen from my decision that I disagree with the Council on this issue, I find that the Council did not act unreasonably in these regards.
8. In addition to the above, it has been put to me by the Applicant that the Council failed to consider established case law which, it was maintained by the Applicant, demonstrates that Strategy 7 of the Local Plan was out of date for purposes of paragraph 11 of the National Planning Policy Framework (the Framework) and that, consequently the Council failed to conduct the proper planning balance exercise in relation to the appeal proposal.
9. For the reasons given in the appeal decision, it will be seen that I do not agree that Strategy 7 of the Local Plan is out of date and find that the policy is consistent with the Framework when considered together with Policy D8 of the Local Plan. Given that the policy is not out of date, and given that the Council provided detailed reasons why they considered the proposal to be in conflict with the provisions of these policies, I do not find that the Council has acted unreasonably in this regard.
10. Taking all of the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case and that, therefore, an award of costs is not justified.

A Spencer-Peet

INSPECTOR