



Costs Decision

Site visit made on 15 April 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Costs application in relation to Appeal Ref: APP/X1118/W/21/3266917 Horseshoe Barn, Withy Down, Lower Loxhore, Barnstaple EX31 4SS

- 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 Paul Challacombe for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of planning permission for a change of use of part of the applicant's holding for use by tents, as part of a small tourism enterprise.
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Decision

1. The application for an award of costs is allowed, in part, in the terms set out below.

Procedural matter

2. The conclusion of the Council's rebuttal to the appellant's application indicated that the appellant had acted unreasonably and that the Council was making an application for an award of costs. The Council has been invited to provide reasons for having made the application outside the timescales set out in Planning Practice Guidance (PPG). No response has been received and I have, therefore, considered this no further.

Reasons

3. The 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.
4. The Council's first reason for refusal was, broadly, concerned with the location of the appeal site and alleged lack of conformity with policies seeking to guide the location of tourism accommodation. Although the Council provided no substantive evidence regarding an alleged conflict Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP), the overall case was substantiated through detailed analysis of Policy DM18 which relates specifically to tourism accommodation. No unreasonable behaviour occurred in this regard, so the application for a full award of costs fails.
5. However, there is little substance to the Council's case in respect of the other 4 reasons for refusal. Harm has been alleged in terms of landscape impact, but this largely appears to be derived from the rural location rather than an objective analysis of the site and its landscape setting. Much has been made of the size of the site relative to the proposal, but there is no substantive evidence as to why some parts of the site would be inappropriate or why a

- smaller area is necessary to avoid harm. While the appellant may have signalled intent to provide details of landscape mitigation and has not done so, there is no clear reason why this would be necessary where no harm would arise, or why it could not be secured by planning condition if deemed necessary.
6. Further harm has been alleged to the setting of heritage assets. The Council indicates that an agricultural appearance of the appeal site would allow the assets to be appreciated in the context of farmed countryside, but given the lack of intervisibility of the assets and sites, I found that such would remain the case even if the development were to proceed. In light of this, the Council have provided no substantive evidence as to how the site forms part of the setting or contributes to the significance of the assets. I note that LP Policy DM07 indicates that a Heritage Statement should be submitted, but that is only necessary where the asset or its setting would be affected.
 7. The third reason for refusal, and part of the second, is based upon an assertion that the private and public roads providing access are unsuitable. I have noted their characteristics in my main decision and I note that the Council were following the advice of the local highway authority. Nevertheless, the reason for refusal and evidence on this matter is little more than a description of the characteristics of the access routes and there is no substantive evidence as to how harm would actually materialise. It is further said that the scale of employment is not appropriate to the accessibility of the site, but there is no clear analysis of what that scale of employment would be to justify those concerns.
 8. In addition to landscape and heritage matters, the fourth reason for refusal is concerned with an alleged lack of information to indicate how the development would avoid harm to biodiversity and ancient woodland. While the site may be adjacent to planted ancient woodland, and the Forestry Commission referred to standing advice, the Council's evidence does not indicate how harm may arise. The Council say they were concerned about the effect on biodiversity as a consequence of the size of the site, but there is no substantive evidence as to how the two matters are related. Nor is there any indication as to why, given the size and characteristics of the site, enhancement could not be secured through the use of planning conditions.
 9. I acknowledge that it is generally for the party seeking permission to provide evidence as to how any harm would be mitigated. If harm is likely, then it may be appropriate to request information from an applicant to allow the Council to satisfy itself that harm would not arise. However, where it has not been substantiated as to how that harm would arise, or would even be likely, it is unreasonable to refuse permission based on a lack of information, even if requested information has not been provided.
 10. The consequence of the approach adopted by the Council in this case has resulted in vague reasons for refusal about the proposal's impact. The reasons for refusal make generalised assertions about harm to various interests, but without objective analysis as to how that would actually arise at this specific site. I, therefore, find that the Council has behaved unreasonably in respect of all but the first reason for refusal.
 11. Unreasonable behaviour has not caused the appellant to incur wasted expense preparing evidence in connection with the first reason for refusal. Nor, as the

appeal could not have been avoided altogether, has unreasonable behaviour caused wasted expense in respect of the administration of the appeal process. However, the appellant has been put to some wasted expense dealing with the other matters that I have described.

12. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

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 North Devon District Council shall pay to Mr Paul Challacombe, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of evidence in connection reasons for refusal Nos. 2, 3, 4 and 5, such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to North Devon 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.

M Bale

INSPECTOR