



## Costs Decision

Site visit made on 8 June 2021

**by Mrs H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 July 2021**

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### **Costs application in relation to Appeal Ref: APP/X1118/W/21/3268939 4 Buckingham Close, South Molton EX36 4ER**

- 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 & Mrs Everitt for a full award of costs against North Devon Council.
  - The appeal was against the refusal of planning permission for demolition of existing bungalow and single garage, with construction of replacement, split level dwelling and double garage.
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### **Decision**

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

### **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. An award of costs can be based on unreasonable behaviour relating to the procedural aspects of the appeal, or the substantive issues, relating to the planning merits. Examples of unreasonable substantive behaviour include preventing or delaying development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant alleges that in respect of both reasons for refusal, but particularly in respect of the effects on the living conditions of neighbouring occupiers, the Council has produced vague, unsubstantiated reasons for refusal which are not supported by objective analyses. It is alleged that the Council made suggestions about what would make the application acceptable which were acted upon, and that subsequently, following a visit to the neighbouring dwellings, further claims that the scheme was unacceptable were made without objective evidence to support the Council's position. Evidence of this alleged unreasonableness relates to the Council's lack of counter evidence on the effects of shading and sight lines.
5. The Council's response indicates that the onus is on the appellant to demonstrate that the scheme is acceptable, and that the decision was reached through numerous site visits to both the appeal site and neighbouring

dwellings. The Council indicate that the opportunity to engage through pre-application discussions was not instigated in this instance and that discussions on the need for amendments to the scheme were ongoing throughout consideration of the application.

6. There is limited documented evidence of the exchanges between the parties during the course of the application process, but it is evident from the changes made to the plans that the parties were in discussion about possible amendments that could overcome concerns raised. Whilst ultimately, such changes were not felt to have made the scheme acceptable to the Council, it is clear that the Council did not refuse to engage and took account of the views of all affected parties. Whilst photographs may have been useful to demonstrate overshadowing or overlooking, the Council should not be expected to produce reams of counter evidence to justify all areas of concern about each proposal. I do not consider that the lack of such is an indication that the Council's views are vague, inaccurate or unsubstantiated.
7. I have considered the cases of both parties in detail. The officer's report issued to substantiate the Council's decision on the scheme is detailed and clearly explains the rationale for the decision reached. Similarly, the Council's Statement of Case further expands on the rigour applied to the assessment and why it was felt that those reasons stood up to scrutiny. Whilst I have not agreed with all aspects of the Council's case, none of the claims about the impacts of the proposal are illogical, unfounded or based on inaccurate information.
8. Whilst the outcome of the application process will have come as a disappointment to the appellant, I cannot find evidence that the Council has behaved unreasonably in reaching its decision or through the handling of the appeal. Nor could the appeal have been avoided. The Council's reasons for refusal are complete, precise, specific, relevant, and the evidence produced in defence of the case is not vague, generalised or inaccurate.

## **Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and neither a full, nor partial award of costs is justified.

*Hollie Nicholls*

INSPECTOR