
Costs Decision

Site visit made on 13 July 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

**Costs application in relation to Appeal Ref: APP/X1118/W/20/3265728
Middle Yarnacott Farm, Log Cabin, Track Past Middle Yarnacott, Swimbridge
EX32 0QY**

- 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 Ms Zena Burland for a partial award of costs against North Devon District Council.
 - The appeal was against the refusal of planning permission for change of use of land in order to put 4 shepherds huts as holiday accommodation.
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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 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 application is premised largely on the grounds that the Council failed to co-operate in the determination of the application; failed to respond to invitations to discuss concerns and failed to inspect the site. The applicant contends that, if the Council had communicated with the appellant, and visited the site before determination of the application, it would have been clear that Reasons 1 and 3 were without merit. Consequently, it would have been unnecessary for the applicant to expend time and money in challenging them at appeal.
4. The PPG clarifies that costs cannot be claimed for the period during the determination of the planning application. However, all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
5. The National Planning Policy Framework says local planning authorities should work pro-actively with applicants to secure developments that will improve the economic, social, and environmental conditions of the area. It goes on to say that pre-application engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. In this instance the evidence indicates that the applicant did not seek pre-application advice. In view of the pressure on local planning authorities to make decisions on planning applications within the statutory period for

determination, it was not unreasonable for the Council to make its decision based on the submitted documentation.

6. Whilst it would be normal practice for Council Officers to visit planning application sites, I am mindful that this application was submitted during the COVID-19 pandemic, at a time when many Councils were seeking to minimise social contact and non-essential travel. A visit had taken place in July 2019 to consider the previous application, so there was already an awareness of the nature of the site and its surroundings. Consequently, in the abnormal circumstances of a pandemic, the Council's decision to determine the application without a site visit was justifiable.
7. Regarding Reason 1, the Council's conclusion that there was not currently any tourism accommodation on the site was based on the photographs submitted with the application, which showed that the approved holiday unit was not yet complete. Furthermore, it relied on planning records that demonstrated there was no planning permission for the other holiday accommodation on the site. A visit may have demonstrated that the other buildings were occupied, but it would not have altered the planning history that led the Council to its conclusion.
8. Regarding Reason 3, the appellant comments that a visit would have allowed observation of the biodiversity enhancements that had previously been undertaken on the site. However, it is clear from the Council's decision, and subsequent appeal statement, that the only point of difference on this issue was the lack of detail on the plans to identify the proposed enhancements that were recommended in the submitted Ecological Assessment. A site visit would not have altered the Council's position on this matter. Furthermore, it would have been unreasonable for the Council to require the applicant to expend time and money on preparing additional drawings showing these details, when it had already concluded that the proposal was contrary to Policy DM18, so would be refused anyway.
9. The rationale behind the Council's decision was clearly set out in the delegated report. My decision was based on a balanced judgement of whether the recently completed holiday unit, and the other units that do not have express planning permission, amounted to existing tourism accommodation for the purposes of Policy DM18. Further judgement was involved in concluding whether the additional units proposed were in scale and character with the existing development. Therefore, it was not unreasonable for the Council to have come to a different conclusion. A fully reasoned defence for all three of its reasons for refusal was provided in its appeal statement, with evidence and reference to development plan policies. The PPG says that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
10. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR