



Costs Decision

Site visit made on 20 July 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

Costs application in relation to Appeal Ref: APP/U1105/W/21/3270506 The Rowans, Sidmouth Road, Clyst St Mary, Exeter EX5 1DR

- 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 R G Down for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for change of use of existing agricultural barn & workshop at Crealy Farms to 2 no. 2 bedroom ground floor residential flats.
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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 contends that the Council acted unreasonably through:
 - a) lack of cooperation with the other party;
 - b) failure to adhere to deadlines;
 - c) 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;
 - d) failure to produce evidence to substantiate each reason for refusal on appeal;
 - e) vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and,
 - f) not reviewing their case promptly following the lodging of the appeal.
4. In support of the first issue, the applicant has submitted correspondence between the parties that took place during the application. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application, but that 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 correspondence demonstrates that the Council was prepared to engage with the applicant in discussing the matters of difference between the parties. Although this did not result in the application being approved, it did clarify the issues that were in dispute. This engagement resulted in a reason for refusal that was focussed solely on the accessibility of the site to services and facilities, rather than the principle of residential development in the countryside. Consequently, I do not find that the Council was unreasonable in its cooperation with the applicant.
6. On the second matter, the Council's questionnaire was received five days after the date specified in the appeal timetable, and no statement of case was submitted. There is no evidence before me to demonstrate that the short delay in the submission of the questionnaire resulted in any additional unnecessary or wasted expense for the applicant. The lack of an appeal statement is considered under the fourth issue, below. I do not, therefore, find that this failure to adhere to deadlines amounts to unreasonable behaviour on the part of the Council.
7. On the third issue, the applicant contends that the Council's consideration of the application ignored the most relevant policy (Policy D8 of the Local Plan), and instead relied on an inappropriate policy (Policy H4). The application correspondence does demonstrate that the Council initially considered there to be a conflict with Policy H4. However, as a result of the dialogue between the parties, neither the delegated report, nor the decision notice, cited conflict with Policy H4 as a reason for refusal. The delegated report noted that Policy D8 provided some policy support, but highlighted non-compliance with one of the criteria of that policy as the main point of issue. I do not, therefore, find that the Council acted unreasonably in its application of policies when making its decision on the application.
8. The PPG states that Councils are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal. The applicant points to the lack of an appeal statement from the Council as evidence of unreasonable behaviour with regard to the fourth issue. However, it is not unusual for a Council to rely on its delegated report, rather than a statement of case, in defence of its position on appeal. Indeed, this can avoid unnecessary duplication of material. The report clearly, and succinctly, set out the rationale behind the Council's decision. Consequently, the issues that the applicant needed to address in his Grounds of Appeal were apparent. The decision not to duplicate or augment this material in a separate statement does not amount to unreasonable behaviour.
9. On the fifth issue, the applicant alleges that the Council unreasonably suggested that the appeal site was in an isolated location, without easy access to services, despite an Inspector's findings on a recent appeal nearby. However, the delegated report did say that the site "*could not reasonably be described as an isolated home such that provisions of Paragraph 79 would apply*". It was the Council's case that occupants of the flats would not have easy access to services, other than by car. The delegated report explained that the distance to the nearest settlements, and the nature of the road and traffic, made walking or cycling dangerous or unattractive options. This was not

entirely contradictory to the comments of the previous Inspector, who had also referred to the lack of a complete network of footpaths alongside the busy Sidmouth Road linking the site with the sporadically located local services.

10. On the evidence, I concurred with the Council that occupants of the flats would be unlikely to access services in Clyst St Mary or Exeter by bicycle or on foot. I concluded, however, that the proximity of the bus stop resulted in there being a realistic alternative to the private car for most trips. Whilst the Council came to a different view, their conclusion was not based on inaccurate assertions, so was not unreasonable.
11. On the final issue, the appellant suggests that the Council's failure to provide an appeal statement may be a demonstration that it had chosen not to defend the appeal. In these circumstances, it is contended that the Council should have informed the applicant and Inspectorate of its position. There is, though, no evidence that the Council's position did alter when the appeal was submitted. My attention has not been drawn to any change in policy or circumstances, or new evidence, that indicate that the Council might have come to a different view less than three months after it made its decision. Consequently, having received and considered the appeal documents, it would not have been unreasonable for the Council to conclude that its position remained as set out in its delegated report, and that a separate statement was not necessary.
12. The PPG advises 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. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR