



Costs Decision

Site visit made on 28 September 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Costs application in relation to Appeal Ref: APP/X1165/D/21/3280705 Dawn, Brim Hill, St Marychurch TQ1 4TR

- 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 Tony Payne for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for extensions and renovations to the existing house and garage.
-

Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance 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. Costs awards can either relate to unreasonable behaviour of a procedural nature - relating to the process, or substantive - relating to the issues arising from the merits of the appeal.
3. The applicant seeks costs on the basis that the members of the Council's Planning Committee disagreed with the recommendations of the Planning Officer without adequate grounds for doing so, particularly in light of a very similar scheme which was approved in 2016.
4. It is alleged that the only cited Policy in the reason for refusal is one that cross references others in the Local Plan, against which the previous applications were considered and consented, and that too little regard has been paid to the fallback positions from the alleged implementation of the 2016 permission and alternative permitted development fallback options. These aspects relate to the substantive merits of the case.
5. A procedural issue raised is that the Council has referred to the setting of Maidencombe Conservation Area (CA) when the LBCA Act¹, under S72, specifically refers to development within a CA, resulting in the incorrect application of legislation.
6. The Council's response indicates that the Committee was not duty bound to accept the professional advice of its officers and debated the matter at length before deciding to depart from the recommendation. The scheme which the applicant alleges is almost identical has numerous changes and since it was approved, the policy context has materially changed through the addition of

¹ Listed Building and Conservation Areas Act 1990

the Torquay Neighbourhood Plan (NP) to the development plan in 2019. Policy TH12 which is included within the reason for refusal is also one which provides more detail on the factors to be considered within the Maidencombe Village Envelope and does not solely rely on cross-references to other Torbay Local Plan policies against which previous proposals were determined.

7. In terms of the weight to be attributed to fallback options, the Council has raised the absence of a Certificate of Lawfulness at the time of the consideration of the appeal proposal, and the lack of intent to rely on such in the event that the appeal were dismissed. It is also claimed that the assessment of the proposal in the context of the setting of the CA was not flawed, even if not directed by the LBCA Act, due to the requirements under policies of the development plan and National Planning Policy Framework.
8. Whilst I understand the applicant's frustrations at the duration and outcome of the process in relation to what may have seemed a logical recommendation, I agree with the Council that the Committee was entitled to reach its own conclusion on the merits of the case, where an alternative case could be made. In respect of effects on the character and appearance of an area and setting effects on the CA, there is clearly a degree of subjectivity that explains the alternative view reached by the Committee.
9. I share the view that the absence of a Certificate of Lawfulness prevented consideration of the fallback as a significant material consideration. Whilst I note from the evidence that a Certificate is in the process of being sought, the role of a Section 78 appeal is not to fetter the interests of a future decision maker in this regard. Given the conflicting evidence on the availability of a fallback position and its likely implementation, I have focussed on the consideration of the appeal proposal specifically on its own merits.
10. In respect of Policy TH12 of the NP, I am satisfied that it is an applicable policy setting out its own requirements for assessment of schemes within the Maidencombe Village Envelope, and does not merely rely on policies of the Local Plan against which former schemes, of a degree of difference to the current appeal scheme, may have been assessed. I also regard the assessment of the potential harm to the setting of the CA, as a designated heritage asset, is required by the development plan and Framework, even if S72 of the LBCA Act specifically refers to development within a conservation area. Whilst overall, I have sided with the applicant in respect of the merits of the appeal, the assessment on the setting of the CA was not irrelevant and no procedural wrongdoing has occurred in this regard.
11. Taking all factors into account, it does not appear that the costs application relates to any unreasonable behaviour by the Council in relation to the substance or its handling of the appeal application or appeal itself, and nor does it appear to me that an award of costs would be justified in either regard.
12. For the reasons set out above, the award of costs is therefore refused.

Hollie Nicholls

INSPECTOR