The Planning Inspectorate

Costs Decision

Site visit made on 4 January 2022

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Costs application in relation to Appeal Ref: APP/Q1153/W/21/3282968
Land to the rear of Edgcumbe Terrace, Milton Abbot, Tavistock, Devon, PL19 0PE.

- 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 West Devon Borough Council for a full award of costs against Mr & Mrs R & J Cole.
- The appeal was against the refusal of planning permission for the erection of 5 dwellings.

Decision

1. The application is refused.

Reasons

2. The Government's Planning Practice Guidance advises that parties in planning appeals normally meet their own expenses. However, costs may be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. Examples of where appellants may be at risk of an award of costs include where an appeal has no reasonable prospect of succeeding, such as development clearly not being accordance with the development plan, or where fresh and substantial evidence is introduced at a late stage resulting in extra expense for preparatory work that would not otherwise have arisen.

4. I note the Council's criticism that the appellants position in respect of the impact upon the significance of the Grade I listed church appeared to change between the application and appeal stages. Within the appeal decision, I found less than substantial harm to the significance of this designated heritage asset and, in so doing, came to the same conclusion as the Council and Historic England on this matter. Whilst this harm carries much weight in the planning balance, it is also important to consider this alongside any public benefits.

5. Each case must be determined on its own merits and the development plan does not prohibit development where less than substantial harm to the significance of designated heritage assets has been identified. Whilst there may therefore have been an inconsistency in the appellants' agent's approach to this matter, it was by no means certain that the appeal had no reasonable prospect of succeeding. Moreover, Milton Abbot has been identified for some limited growth within the development plan and until the neighbourhood plan

has reached a stage where it can be given considerable weight, appeals like the one that was before me could reasonably be expected.

6. I also found within the appeal decision that technical details relating to surface water drainage could be addressed at reserved matters stage. The drainage report submitted as part of the appellants appeal demonstrates that this could be achieved as part of the layout that was before the Council when it determined the application. The drainage report is a very concise document prepared in response to one of the Council's reasons for refusal. I cannot see that the Council was put to any significant additional or unnecessary expense in responding to that report. Moreover, the development plan does not prohibit development where the submission of relevant technical details would be capable of addressing any identified flood risk matters.

7. I note the Council's alternative claim for a partial award of costs relating to the amended and additional plans that were submitted as part of the appeal. In this regard, I found that consideration of these plans would be likely to cause prejudice to some interested parties and, as a consequence, was unable to take them into account. Having objected to the submission of these plans, including referring to the Wheatcroft principles, as well as drawing attention to the large number of representations that had been made at application stage, it is unclear why the Council then chose to spend time considering the matter further. In this regard, the Council, within its Statement, remarked that *"it has not seen the revised plan."* Whilst it may therefore have been unreasonable for the appellants to submit amended plans at the appeal stage, it is unclear to me what unnecessary or wasted expense the Council incurred.

8. It has not been demonstrated that any unreasonable behaviour by the appellants caused the Council to incur unnecessary or wasted expenses. I therefore conclude that this application should not succeed.

Neil Pope

Inspector