



Costs Decision

Site visit made on 5 January 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Costs application in relation to Appeal Ref: APP/X1165/W/21/3281163 205 Dartmouth Road, Paignton TQ4 6LG

- 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 and Mrs Taffinder for a full award of costs against Torbay Council.
 - The appeal was against the refusal of outline planning permission for a new 1 no. 4 bed 7 persons dwelling with access from Broadsands Bend and with some matters reserved.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded where a party has acted unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellants case for an award of costs is that they utilised the pre-application service provided by the Council and having gained a positive response, the Council then failed to engage and work proactively to look for solutions during the determination of the planning application to enable the grant of planning permission. Whilst the National Planning Policy Framework does encourage authorities to find solutions, the encouragement in that respect does not go as far as to suggest that each and every scheme may be acceptable.
4. Moreover, the Council point out that their pre-application advice was not wholly positive and included several areas of concern. This includes their concerns about the impact on the character and appearance of the area, the impact on the living conditions of the occupiers of the neighbouring property and the impact on protected species and the South Hams Special Area of Conservation (SAC) population of greater horseshoe Bats. As noted in the associated appeal decision, the onus falls principally on an applicant to substantiate their proposal.
5. I accept that the Council could have asked the appellant to provide further information such as a sun path analysis of the proposal or an ecological appraisal of the site, during the determination of the application. The Council made contact with the appellants on 9 June 2021 setting out their concerns about the planning application but did not expressly request the submission of this information.

6. However, the need for adequate information to accompany an application had been made clear in the pre-application advice. The appellants clearly sought to address some of the concerns set out by the Council in that advice, including reducing the number of dwellings on site from two to one. However, taking account of the advice given by the Council through the application process and the credible case they have presented at appeal in respect of the merits of the proposal, it is my view that their failure to request specific pieces of evidence does not amount to unreasonable behaviour. It appears on the evidence before me that the appellant failed to substantiate their case as much as the Council failed to request specific pieces of evidence.
7. As such, I find that the Council has not acted unreasonably in proceeding to determine the application on the basis of the plans and information it had before them and the absence of a request for additional information from the appellant does not amount to unreasonable behaviour.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason and having regard to all matters raised, an award of costs is therefore not justified.

Alison Fish

INSPECTOR