
Costs Decision

Site visit made on 22 March 2022

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 06 April 2022

**Costs application in relation to Appeal Ref: APP/Q1153/W/21/3278874
Kimber View, Road from Patchacott Cross to Baileys Farm, Patchacott
EX21 5AR**

- 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 Miss Josh and Jess Ware and Wonnacott for a partial award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of equestrian barn to a residential dwelling (Use Class C3) with minor alterations.
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Decision

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

Reasons

2. Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Parties in planning appeals and other planning proceedings normally meet their own expenses.
3. The PPG states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Applicants are seeking a partial award of costs in relation to procedural and substantive matters.
4. The PPG indicates that a Local Planning Authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour and, amongst other matters, includes "lack of co-operation with the other party or parties". The Applicants consider that the Council has failed to act in accordance with the positive and proactive approach set out within paragraph 38 of the National Planning Policy Framework (the Framework). The PPG also includes examples of the types of behaviour that may give rise to a substantive award of costs against a Local Planning Authority. Amongst other matters, this can include, "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
5. In terms of the second reason for refusal given by the Council, which concerned the effect of the proposal on the character and appearance of the area, I find that the information contained within the officer's report was comprehensive with regards to describing the area surrounding the appeal site

and the proposed development. I further find that the report provides clear and understandable reasons to substantiate the refusal on these grounds, with reference to both the previous approval of an equestrian barn and the different effect that domestic use of that building would cause to the character and appearance of the area. As such, and given my findings in the appeal decision on this matter, I conclude that the Council have not acted unreasonably with regards to vague, generalised or inaccurate assertions that were not supported by any objective analysis.

6. With regards to the first reason for refusal, the Applicants have put it to me that the Council gave vague conclusions regarding some exceptions for locating housing within smaller villages, hamlets and the countryside provided for within Policy TTV26 of the Plymouth and South West Devon Joint Local Plan (the Local Plan). However, I again find that the Council has provided clear reasoning why the proposal would fail to accord with those exceptions which concern the re-use of redundant or traditional buildings. It will be seen from the appeal decision that I share the Council's conclusions, and I therefore find that the Council has not acted unreasonably in this respect.
7. Notwithstanding the above, it will also be seen from the appeal decision that I concur with the Applicants that concerns regarding conflict with Policy DEV32 of the Local Plan could adequately be dealt with by planning conditions. Whilst I agree that such matters could have been considered by the Council during their assessment of the proposal by requesting further information from the Applicants, the response in relation to this part of the reason for refusal is straightforward. The Applicants supporting information in this respect would have been required even if the Council had requested further details during their determination of the planning application. In effect the Applicants have quickly and easily rebutted the Council's position within the appeal without wasting expenditure.
8. In respect of the third reason for refusal given by the Council, even in the event that a planning obligation was sought for local connection and which could result in the scheme complying with Policy DEV8 of the Local Plan, for the reasons given in the appeal decision, the proposed development would represent unsustainable development and would conflict with the policies of the development plan when taken as a whole. Consequently, the provision of a planning obligation that required future occupants to have a local connection would not have been sufficient to overcome the harmful impacts of the proposal with regards to its unsustainable location and adverse effect on the character and appearance of the area.
9. With regards to paragraph 38 of the Framework, the Council was clearly of the view that there were no means by which the proposal could have been made acceptable by the provision of additional information concerning low carbon development, or through the provision of a planning obligation that secured affordable housing with a local connection requirement.
10. I therefore conclude that it has not been demonstrated that the Council behaved unreasonably in respect of procedural or substantive matters which caused the Applicants to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

A Spencer-Peet INSPECTOR