
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: 20 April 2022

Costs application in relation to Appeal Ref: APP/Q1153/W/21/3286032 Land at SX 445 766, Lamerton

- 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 Baker Estates Ltd for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for the outline application with some matters reserved for residential development of up to 20 dwellings, formation of new access and associated works.
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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 Applicant is seeking a full award of costs in relation to substantive matters.
4. The PPG includes examples of unreasonable behaviour, by planning authorities. Amongst other things, this can include, "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" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
5. The evidence before me in the appeal indicates that the Planning Authority decided to refuse the application contrary to the initial advice of their professional officers. Whilst Local Planning Authorities are not bound to accept the recommendations of their officers, as noted above the PPG provides that Councils are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and where the reasons given for refusal is based on vague or generalised assertions about the impact of the scheme.

6. The Council's decision notice clearly identifies the policies of the development plan against which it was considered the proposal would fail to comply with. The Council provided a comprehensive statement of case, which gave a clear and coherent explanation in support of its position, with reference to relevant policies of the development plan and which supported the contention that the scheme would be harmful to the planning authority's spatial strategy. The evidence provided was detailed and specific to the appeal scheme. The Council has, therefore, fulfilled the requirement to provide evidence to substantiate the reason for refusal, which included an objective analysis of the issues.
7. As will be seen from the appeal decision, I have concluded that, on its overall merits, the proposal does not comply with the development plan when taken as a whole. Whilst that conclusion did not reflect the findings of the Officer's Report, there was a degree of subjective judgement involved in determining whether the site was within or outside of the settlement and, therefore, whether the proposal would comply with the spatial strategy contained within the development plan. As the acceptability of the proposal depended upon the exercise of the Council's judgment, it was not development that could clearly be permitted, having regard to the development plan, national policy, and any other material considerations.
8. My appeal decision supports the Council's stance. As such, whilst I found differently to the Officer's Report on this matter, the issue was not so clear that it was unreasonable for Members to have arrived at an alternative conclusion.
9. Although the Applicant is of the view that the benefits of the appeal proposal would outweigh any potential harm caused, it was open to the Council to take a different view based on its assessment of the proposal. I appreciate that the Committee minutes are brief. However, the officer's report to the Committee included comprehensive details of the benefits of the scheme. The Council's subsequent statement of case is clear about the benefits that the proposal would provide and found that they would not outweigh the harm arising from the conflict with the development plan. On the evidence before me it is a view with which I concur. As such there is nothing before me to suggest that the planning balance was not a factor taken into account by Members.
10. 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 and that, therefore, an award of costs is not justified.

A Spencer-Peet

INSPECTOR