



Costs Decision

Site visit made on 29 March 2022

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2022.

Costs application in relation to Appeal Ref: APP/X1165/3288383

Land on corner of Edginswell Close and Edginswell Lane, Torquay TQ2 7JA

- 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 Kevin Sommers of JK Somers for a partial award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission to provide a new residential dwelling on the land at Edginswell Lane, Torquay.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) 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.
3. The applicant considers that when determining the application, the Council has failed to engage or work proactively with them, receiving no contact between validation and refusal. The Council did not in the applicant's view consider the previous appeal decision¹ on the site, nor the parameters within which development would be acceptable as a result of that decision.
4. Furthermore, the applicant believes that the Council has made inaccurate assertions in respect of the size of the proposed parking spaces, resulting in an unwarranted and unreasonable reason for refusal in respect of highway safety.
5. The Council believes it has acted reasonably in all respects. They say that the applicant did not undertake pre-application discussions, and that the application process should not be used where significant amendments are necessary. They also say that communication with the applicant did take place with advice being given about the recommendation.
6. In respect of parking spaces, the Council maintain their stance that the spaces' width would not provide enough room for door opening, with reference to Appendix F of the Torbay Local Plan 2015.

¹ reference APP/X1165/W/19/3233829

-
7. In respect of engagement, the National Planning Policy Framework (paragraph 40 and 41) encourages applicants to undertake pre-application discussions, which assist local planning authorities in issuing timely decisions. It is the applicant's choice whether or not to seek such advice, but the Council was entitled to determine the application on the information before it without seeking amendments.
 8. While better communication with the applicant may have been preferable, I do not believe that the Council has acted unreasonably by not seeking amendments to the scheme prior to determination, particularly in light of my findings on both main issues.
 9. Turning to the previous appeal decision, this was referred to in the Planning Officer Report, including when discussing the issue of visual amenity and the variety of dwellings in the area. The Inspector found harm to the area's character and appearance from the earlier scheme and, in reaching its view on the merits of the current proposal, I consider that the Council has not persisted with objections which the previous Inspector had found to be acceptable.
 10. In respect of parking spaces, I have found in the main decision that the larger size of space is necessary here because of the retaining wall and access. The Council's evidence in respect of parking spaces and highway safety was not inaccurate and accords with the advice in the adopted Development Plan. The Council's stance on this issue was reasonable.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I conclude that the application for a partial award of costs should be refused.

O Marigold

INSPECTOR