
Costs Decision

Site visit made on 26 April 2022

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

an Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Costs application in relation to Appeal Ref: APP/P1133/W/21/3283046 Land to the north of Indio House, Newton Road, Bovey Tracey TQ13 9BG

- 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 Kach Developments for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of planning permission for approval of details for 22 dwellings and associated works (approval sought for appearance, scale, landscaping and layout).
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Outline planning permission was granted on appeal¹ (the Previous Decision) for up to 30 dwellings and associated works, whilst reserving appearance, landscaping, layout and scale for future approval.
3. 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.
4. 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.
5. 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", "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis", "persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable", "refusing to approve reserved matters when the objections relate to issues that should already have been

¹ Appeal Reference: APP/P1133/W/18/3207470

- considered at the outline stage” and “refusing planning permission on a planning ground capable of being dealt with by conditions”.
6. 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.
 7. In respect of the first and second reasons for refusal given by the Council on the decision notice dated 27 July 2021, which concern the effect of the appeal scheme on biodiversity, character and appearance, the Applicant has put it to me that those relate to in principle matters. As such the contention is that the Council have acted unreasonably with regards to “persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable”.
 8. In these regards, it will be seen from the appeal decision that I have agreed that in respect of the first reason for refusal, such matters should have been considered at the outline stage. However, whilst I have found that to be the case, the Council was presented with legal opinion which considered the position and, contrary to the legal opinion provided by the Appellant, concluded that such matters would be appropriate to consider at the reserved matters stage. The second reason for refusal is closely related to the first and it will again be seen that I have disagreed with the Council in that regard. While I have disagreed with the Council on these matters, the Council did provide evidence in support of the contention, and I therefore do not find that they have acted unreasonably in that regard.
 9. In relation to the third, four and fifth reasons for refusal given by the Council and which concern carbon reduction, refuse collection and bicycle storage arrangements, the Applicant has put it to me that those matters were capable of being addressed by inclusion of planning conditions.
 10. In respect of these reasons for refusal, it will be seen from the appeal decision that these matters could adequately be dealt with by imposing additional planning conditions requiring submission and approval of details. It is noted that matters concerning carbon reduction and refuse collection and storage were included within the Council’s Officer report, with the recommendation that those elements be subject to planning conditions contained within the approval of reserved matters.
 11. There does not appear to be any evidence that indicates the Planning Committee considered whether concerns in respect of these matters could be addressed by planning conditions. Furthermore, there does not appear to be any information supplied by the Council in their evidence or submissions as to why such matters could not be satisfactorily dealt with by attaching those conditions. As such the Council has acted unreasonably in refusing the application on the grounds contained within the third, fourth and fifth reasons for refusal, and the Applicant has been put to unnecessary expense by having to respond to these reasons for refusal within the appeal.

12. In relation to the sixth reason for refusal, the Applicant maintains that as the proposed pedestrian and bicycle access was found to be acceptable by the Inspector in the Previous Decision, the Council has continued to persist in objecting to the scheme which has previously been found to be acceptable.
13. It will be seen from the appeal decision that I agree with the Appellant in this regard, and that any issues regarding access, including that on foot or by bicycle, were considered at the outline stage and therefore cannot be considered further in respect of the reserved matters application. I therefore find that the Council has acted unreasonably in continuing to persist in objecting to the scheme which has previously been found to be acceptable by an Inspector and have refused to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage. The Applicant has been put to unnecessary expense by having to respond to the Council's unreasonable behaviour in their access objections to the proposal.

Conclusions

14. For the reasons outlined above, I conclude that the Council has acted unreasonably, and that the Appellant has incurred unnecessary and wasted expense in contesting the Council's third, fourth, fifth and sixth reasons for refusal. Therefore, a partial award of costs is justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers on that behalf, IT IS HEREBY ORDERED that Teignbridge District Council shall pay to Kach Developments, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's third, fourth, fifth and sixth reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The Applicant is now invited to submit to Teignbridge District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mr A Spencer-Peet
INSPECTOR