

Costs Decision

Site visit made on 8 June 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2022

Costs application in relation to Appeal Ref: APP/Y1110/W/21/3285801 Land adjacent to 17 New North Street, Exeter EX4 4HF

- 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 Belton Properties Ltd for a full award of costs against Exeter City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing garages and construction of 1no. building to form 5no. new apartments with associated landscaping (revised scheme to approval ref. 19/0360/FUL).
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying to incur unnecessary or wasted expense in the appeal process.
3. The PPG goes on to state that parties in planning appeals and other planning proceedings normally meet their own expenses and that all parties are expected to behave reasonably to support an efficient and timely process. It is also helpfully clarified in the PPG that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, though behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or costs should be awarded or not.
4. The appellant highlights both substantive and procedural issues which have resulted in the application for costs. In terms of procedural wrongdoings, it is alleged that the Council have failed to work proactively and that the application was being processed for over 30 weeks without being decided, despite the Council's indication that it was minded to refuse permission, forcing the submission of the non-determination of the appeal. In terms of substantive matters, the appellant alleges that the Council made vague, generalised and inaccurate assertions about the proposal's impact, has failed to produce evidence to substantiate its position in objecting to the proposal and failed to give appropriate weight to the fallback position.
5. The Council did not provide a rebuttal to the costs claim, nor an appeal statement in response to the submission of the appeal. It did, however, provide an officer report from which the putative reasons for refusal have been drawn. I note the email from the planning officer from June 2021 indicating that a refusal would be likely, by virtue of the increased scale and bulk and effects on

the significance of nearby heritage assets. A further email dated August 2021 expands on reasons for the delays, primarily relating to staff shortages, high caseloads and ongoing effects from the COVID-19 Pandemic. The August 2021 email reiterates the concerns in relation to the effects on heritage assets and the intention to refuse the proposal.

6. Following these emails, the appeal against non-determination was submitted in October 2021. The putative reason for refusal relating to heritage was detailed in the officer report received with the appeal questionnaire but an additional reason relating to the living conditions of future occupiers was also included. Though the heritage issue was covered at length in the appellant's appeal statement, there does not appear to be any further comments in relation to this report from the appellant.
7. I am of the view that the lengthy delays with the processing of the appeal application are unfortunate and appear out of scale with the substantive matter of the case, i.e. whether the scheme is acceptable when considered in comparison with the extant scheme. Whilst unfortunate, these delays are not unique and many cases have suffered in a similar way during the initial post-Pandemic phase. One anticipates that the Council has since addressed the issue of staff shortages.
8. However, I do not consider that the appeal was entirely avoidable. On balance, I have sided with the appellant on the marginality between the extant and proposed schemes in terms of effects on heritage assets, noting that the very concessions made to achieve planning permission under the extant scheme have been reintroduced under the current proposal and thus, unsurprisingly of issue to the Council. Whilst the emails exchanged prior to the submission of the appeal were reasonably vague about the impact of the proposal on heritage assets, I find that the reason is adequately explained in the subsequent report, which counts as sufficient evidence and therefore this reason is not generalised or unsubstantiated. Furthermore, given the degree of subjectivity in relation to scale, mass, design, visual and setting effects, I cannot agree that such claims about the proposal are inaccurate.
9. In relation to the other main issue, even taking into account the relevant fallback position, I have found that the appeal was unavoidable because it fails to achieve compliance with the development plan and, in my view, there is an absence of public benefits to outweigh these harms. I have noted an absence of rebuttal to this particular issue from the appellant and thus, have reached this view on the basis of the evidence and from my own observations.
10. Therefore, as detailed above, the appeal could not have been avoided in any event, and, though there were regrettable delays, there is no evidence that the Council has intentionally behaved unreasonably, either substantively or procedurally in relation to the appeal application or the appeal itself. Wasted expense, as described in the PPG, has not been demonstrated and an award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR