
Costs Decision

Site visit made on 21 June 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

**Costs application in relation to Appeal Ref: APP/Q1153/W/21/3288683
Lower Lower, road from Higher Lower Farm to Lower Bridge, Hatherleigh,
Okehampton EX20 3LF**

- 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 Mrs Mills for a full award of costs against West Devon Borough Council.
 - The application Ref 3143/21/FUL, dated 11 August 2021, was refused by notice dated 7 October 2021.
 - The appeal was against the refusal of planning permission for a proposed development described on the application form as, "Proposed conversion of barn to single dwelling".
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Decision

1. The application for an award of 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 for costs to incur unnecessary or wasted expense in the appeal process.
3. Following the refusal of an application for planning permission, the Council gave pre-application advice to the applicants. The applicants consider that the Council acted unreasonably in expressing a general positive pre-application response, when the second application was refused planning permission.
4. The extracts provided from the Officer's Report for the first application mention the officer's opinion that the barn had been significantly altered by more modern development and the linear length had resulted in the historical significance of the stone part of the building being lost.
5. However, the evidence before me does not indicate that the Council's view was fixed on this point. Rather, the copies of the correspondence supplied indicates that whilst the Council had already assessed the historic merit of the barn when determining the first planning application, in essence the Council were merely suggesting that if the applicants were to provide more information relating to its heritage interest, this might provide further support for their proposal.
6. The pre-application advice specifically stated that, 'I cannot offer any guarantee that a revised application will ultimately be successful at this stage, but can suggest the above as a potential avenue of approach'. Moreover, the pre-application advice made clear that the Council was not mandating that a

Heritage Impact Statement must be submitted (with the associated expense), only that this was an option to be considered.

7. Importantly, as opposed to providing a strong indication that any subsequent application would be likely to be approved, the Council's pre-application advice stated that it would be for the applicants to demonstrate that the positive benefits of the development in terms of the sensitive conversion of a historic barn outweighed the dis-benefits of the location. Considering all of the above, in my view the pre-application advice did not amount to a general positive response following the previous refusal.
8. This contrasts with the situation described in the Costs Decision in relation to appeal Ref APP/M1005/W/19/3238780, where the Council suggested specific physical amendments which could potentially address a matter, and where the Inspector stated in the Costs Decision that it would not have been unreasonable for an application to have been submitted on this basis.
9. Decision-making relating to the historic environment involves taking a multi-faceted approach where a heritage interest may include archaeological, architectural, artistic, or historic considerations, where the opinion of an expert in these areas can often be illuminating. Considering this, the fact that the Council, on considering the Heritage Impact Statement as part of their determination of the second application, came to the conclusion that there is insufficient heritage justification for the proposal does not mean that the applicants were misled, but rather that the Heritage Impact Statement did not contain persuasive evidence regarding the historic significance of the barn.
10. As the principles of sustainable development and heritage considerations had been referred to in the Council's reasons for refusal for the first application, the second application was not refused on a matter which was not previously raised as an issue, as the Inspector found in the Costs Decision in relation to appeal Ref 3238780, or for reasons that were not previously flagged up as potential issues, as the Inspector found in the Costs Decision in relation to appeal Ref APP/X1118/W/20/3259771.
11. As neither of those Costs Decisions are directly comparable with the application for costs before me they do not change my finding that the Council did not mislead the applicants or act unreasonably when inviting a re-submission with a Heritage Impact Statement.
12. With regards to the Council's Heritage Specialist's comments, whilst consultee comments in writing is beneficial for transparency and to provide an audit trail, the applicants have not referred me to any legal requirements in this respect. The substance of the consultee's response were communicated to the applicants, meaning that they were aware of the implications of the response. Additionally, even if I were to find that this matter constituted unreasonable behaviour, as explained in my appeal decision the Council were correct to refuse the planning application, meaning that no unnecessary or wasted expense has occurred and an appeal would have been the next route to seek resolution.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made.

Alexander O'Doherty

INSPECTOR