
Costs Decisions

Site visit made on 19 July 2022

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

an Inspector appointed by the Secretary of State

Decision date: 10 August 2022

Costs application in relation to Appeal Ref: APP/Y1138/W/21/3283361 Allotments, Tumbling Field Lane, Tiverton, Devon

- 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 LiveWest Homes Limited for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal of planning permission for the erection of 22 dwellings with parking, landscaping and construction of new access.
-

Decision

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

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 that may give rise to a substantive award of costs. 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" and "failure to produce evidence to substantiate each reason for refusal on appeal".
5. The submissions confirm 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.

6. As will be seen from the appeal, whilst two reasons for refusal were given by the Council on its Decision Notice, given the overlap of matters in dispute, it was appropriate to identify a single main issue regarding the location of the site and the effect of the development on the character and appearance of the area.
7. In terms of the location of the site, it is clear that the main parties agreed that it was positioned adjacent to, but crucially outside of the settlement at Tiverton, where the development plan indicated that such locations would be considered to be within the countryside. As will be seen from the decision, I have concluded that the proposal would accord with the exceptions sites policy contained within the development plan. I also agree that it is clear that by including the term 'usually' within the supporting text to describe those settlements adjacent to which such sites can be considered, that does not preclude sites that are adjacent to the settlement identified in Policy S10 of the Mid Devon Local Plan 2013-2033 (the Local Plan).
8. However, I do not necessarily concur that Policy S10 of the Local Plan solely relates to development within the settlement at Tiverton, given that that policy also refers to matters for consideration that would fall outside the settlement limits. One such consideration is that developments retain the green setting of Tiverton as provided by the steep open hillsides around the town.
9. It is well established that policies which comprise the development plan can often pull in different directions. In this instance, whilst the appeal site should have been assessed in terms of the development plan's countryside and exceptions sites policies, I do not necessarily find that the Council acted unreasonably by assessing the appeal scheme against those criteria of Policy S10 of the Local Plan which concerned the setting of the town.
10. Nonetheless, as will be seen from the appeal decision, and by reason of the evidence and submissions in this appeal, it is clear that the appeal proposal would retain the green setting of the town as provided by steeply sloping hillsides, given that the development would not be in such a location and would be seen in the context of the adjacent housing situated at the valley bottom west and southwest of the appeal site. Whilst I agree that it was not unreasonable to assess the scheme against Policy S10 of the Local Plan, in my view the Council has failed to provide evidence to substantiate the second reason for refusal and has provided vague and generalised assertions regarding the impact of the proposal on the setting and character and appearance of the area.
11. In light of the above, and given the conclusions of the appeal decision, I find that the Council has failed to fully consider the application of the exceptions sites policy in relation to the proposed scheme, has failed to provide evidence to substantiate its reasons for refusal and has only provided generalised assertions regarding the impact of the proposal in terms of its location and effect on the character and appearance of the surrounding area. As will be seen from the appeal decision, even in the event that Policy S10 of the Local plan is applicable to the site, the appeal proposal accords with the requirements of that policy and complies with the development plan when taken as a whole. As such, the Council have, in my view, prevented a development that should have clearly been permitted.

Conclusion

12. For the reasons outlined above, I conclude that the Council has acted unreasonably, and that the Applicant has incurred unnecessary and wasted expense in the appeal process. Accordingly, a full award of costs is justified in this instance.

Costs Order

13. 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 in that behalf, IT IS HEREBY ORDERED that Mid Devon District Council shall pay to LiveWest Homes Limited the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The Applicant is now invited to submit to Mid Devon 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.

A Spencer-Peet

INSPECTOR