



Costs Decision

Site visit made on 17 August 2022

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2022

Costs application in relation to Appeal Ref: APP/Q1153/W/22/3297128 10 Ford Street, Tavistock, Devon, PL19 8DY

- 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 & Mrs Selley for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 6 flats, 1 cottage and associated car parking (resubmission of 2147/17/FUL).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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. The Appellant's application for costs raises both substantive and procedural points. The PPG states that Local Planning Authorities (LPA) will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or if they have behaved unreasonably from a procedural point of view.
3. The Appellant contends that the Planning Committee behaved unreasonably in refusing the appealed application contrary to the recommendation of its Planning Officers. Neither the Planning Committee nor the LPA are bound to accept the advice or recommendation given by its Planning Officers. Similarly, it is not uncommon for Planning Committee's to disagree with the advice of its Officers or in applying their own judgement, to reach a different view, to that of their Officers, on the planning merits of a proposal. There can, therefore, be no guarantee that a positive response from Officers will lead to an application being approved. Moreover, there is no evidence before me to suggest that the Planning Committee were not aware of their obligations to weigh up all the relevant issues and submissions in reaching a balanced decision.
4. Furthermore, the Appellant's concerns in this respect appear to only relate to the period leading up to the determination of the planning application. The PPG confirms that costs cannot be claimed in such circumstances, but that the behaviour at the time of the planning application can be taken into account when considering whether or not costs should be awarded in relation to unreasonable behaviour during the appeal process.

5. The Appellant has made reference to the events which led to the planning application initially being approved and then reported back to Planning Committee, where that decision was reversed. However, this process simply demonstrates, in my view, care and attention in reaching the correct decision and of Members being properly informed of all the material considerations they should take into account in reaching their decision. Even so, any outstanding complaints that the Appellant may have in relation to the administration of the planning application and/or the procedures at the Planning Committee meetings are matters that should be taken up directly with the LPA.
6. The Appellant also contends that the Planning Committee and LPA were not in a position to reach the decision they did and prevented development which should have been permitted. I do not agree. The LPA's reason for refusal raised a proper planning consideration, namely the potential loss of light from the proposed development to the ground floor windows within the neighbouring property, 9 Ford Street (No.9). The LPA alleged that this relationship would have a harmful impact on the amenity of the occupiers of No.9 and identified that this harm would, in their judgement, be contrary to policy DEV1 of the Plymouth & South West Devon Joint Local Plan (2014-2034). Whilst this objection was subsequently withdrawn by the LPA, that was in response to the owners of No.9 removing the windows in question and bricking them up following the completion of a Party Wall Agreement (PWA) with the Appellant.
7. Party wall rights and rights of light involve separate processes and legislation to the planning system and are not relevant planning matters when considering the acceptability or otherwise of the development proposed. These rights do not override the requirement for the Planning Committee and LPA to assess the planning merits of the proposed development and its compliance with the development plan. That planning assessment properly included, in this case, consideration of the impact of the proposal on the living conditions of neighbouring occupiers and specifically the loss of light to the ground floor windows of No.9. That is a legitimate planning concern, notwithstanding any party wall or rights of light issues. It was entirely appropriate for the Planning Committee and LPA to apply their judgement to the acceptability of the impact of the proposed development on the living conditions of No.9 and in their planning balancing exercise, to weigh up the alleged adverse effects with the benefits of the proposal and compliance with the development plan, when read as a whole. It was not, therefore, an issue that could have been dealt with by way of an informative.
8. For all the above reasons, I cannot agree that the LPA has acted unreasonably in this case and as such there can be no question that the appellant was put to unnecessary or wasted expense in the appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

G Roberts

INSPECTOR