
Costs Decision

Site visit made on 3 May 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Costs application in relation to Appeal Ref: APP/X1165/W/21/3288353 24 North Rocks Road, Churston With Galmpton, Paignton TQ4 6LF

- 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 Ms I Carlino for a partial award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for a new bungalow.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded where a party has acted unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant's case for a partial award of costs is that the Council in refusing the planning application made vague and inaccurate assertions about the proposal's impact, did not request further information during the course of the determination of the planning application and did not determine the application in a consistent manner. In addition, the applicant refers to a third party response submitted during the appeal process which raised new information about a possible wildlife site.
4. The Council advise that the applicant did not seek pre-application discussions and that minor alterations could not be made during the application determination period to make the scheme acceptable. The Council do accept that the planning permission relating to the adjacent site (referred to as plot 24A) was not considered against the policies which prevailed at the time the decision was made.
5. I am satisfied that the reasons for refusal set out on the Decision Notice are complete, precise, specific and relevant to the planning application. They clearly state the policies of the Torbay Local Plan and the Brixham Peninsula Neighbourhood Plan that the proposal would conflict with. The reasons have been adequately substantiated by the Council in its Officer Report. Whilst I have not concluded in the same way as the Council on the impact on the character and appearance of the area, I do not find that their comments are vague or inaccurate.

6. I note that the applicant did not take up the opportunity of pre-application discussions. Had they done so, they could have been advised about the need for an up-to-date ecological report and an assessment of the impact on the off-site trees. I accept that the Council could have requested those assessments as part of their consideration of the application but given the Council's findings and the first two reasons for refusal, it would not have prevented the need for an appeal.
7. However, the granting of planning permission for an identical dwelling on the adjacent site (plot 24A) in September 2019 after the Brixham Peninsula Neighbourhood Plan 2012-2030 (NP) was made in June 2019 would have indicated to the applicant that a dwelling on the appeal site would also be likely to receive consent and in this respect, it is not surprising that they did not seek pre-application advice. The Council's Officer report states that planning permission for plot 24A was approved prior to the NP being made. However, the Council conceded in their response to the applicant's costs application that this was incorrect and that the permission had been issued after the NP was made. The Council are clear that this would not have altered their findings in respect of the appeal proposal and as such, an appeal could not be avoided. However, the applicant was put to additional expense in addressing inaccurate information provided by the Council.
8. In addition, the consultation response from the Strategy and Project Management Officer of the Council introduced new information in relation to the impact on an Other Site of Wildlife Interest at a late stage, which the applicant had not been made aware of previously. There was no such consultation response set out in the Officer Report and as such, the applicant was put to additional expense in addressing the substance of that response during the appeal process.
9. In these circumstances, whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position, extra costs were incurred and an award in these specific respects is justified.

Conclusion

10. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

COSTS ORDER

11. 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 the Council of Torbay shall pay Ms I Carlino, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the views of the Strategy and Project Management Officer and in addressing the Council's inaccurate information relating to the circumstances surrounding the determination of the earlier planning application for a dwelling on plot 24A.
12. The applicant is now invited to submit to Torbay 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. In the event that the parties cannot agree on the

amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Alison Fish

INSPECTOR