



Costs Decisions

Site visit made on 17 May 2022

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Costs application in relation to Appeal Ref: APP/X1118/W/21/3289836 Fairleigh and adjacent land Georgeham Devon EX33 1JZ

- 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).
 - An application is made by Mr Milton for a full award of costs against North Devon District Council.
 - **Also**, an application is made by North Devon District Council for a full award of costs against Mr Milton.
 - The appeal was against the refusal of planning permission for the erection of nine dwellings (2 social rented and 7 open market) and conversion two flats to form one dwelling (open market) together with associated landscaping and access works
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Decision

1. Both applications for an award of costs are refused.

Reasons

2. In this case there has been an application for costs by both the appellant and the Council. I shall address the appellant's application first.

Mr Milton's Application

3. 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. The PPG provides that, for example, Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, or by 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.
4. Firstly, from the evidence I am satisfied that the Council were aware of the approved scheme at the site. However, it is not unreasonable for there to be requests for various reports and assessments based on the proposal subject to the appeal. There may be reasons why these need to be different or updated from that submitted with the previous approved application.
5. There does appear to be issues of communication between Mr Milton and the Council planning staff. It is also unfortunate if any requests for information was not made early in the application process, but the evidence suggests that there

was time for Mr Milton to arrange to get the information submitted in most cases.

6. It may be that on other sites where development has been approved by the Council that there were differing requirements, but this may be due to a difference in circumstances and potential impacts. I have not the full details to compare with other developments approved, but I do not consider the information required for the appeal scheme to be unreasonable given its scale and location. Furthermore, if the Council did not accept the reports for their quality or content then this is their right to do so, but the Council would need to defend this decision at appeal.
7. With regards to the plans, from the evidence it is apparent that the Council did determine the proposals on the correct plans. The decision made by the Council indicates that any amendments were not sufficient to result in a positive determination of the planning application. Therefore, this matter did not result in the refusal and the subsequent appeal being necessary.
8. With regards to the S106 legal agreement, it should have been made clear that a new version would be required for the new planning application. However, there were reasons for refusal that did not relate to the absence of a legal agreement and so I conclude that even if one was submitted and completed before determination of the planning application then it would not have resulted in the appeal being avoided.
9. It may have been difficult with changes to Council staff and there could have been errors and a lack of clear communication through the planning application process. However, the Council did not rush to refusal the application and did give time for the additional information they required. Overall, it is my view that the Council did not act unreasonably.

Councils Application

10. As set out in the Council application, they did request more information which was not submitted. Being a new planning application there would have needed to be the required information submitted and updated where necessary from that submitted with the previous approved scheme. However, I understand that the applicant may not have been aware of this and is likely to be why these requests were questioned.
11. There does seem to have been some difficulties with clear communication between the parties through the course of the planning application. The application took a substantial amount of time, but it is not clear why the Council did not make a decision earlier in the process if they considered there was a lack of vital information and had given enough time for the applicant to respond.
12. Furthermore, it did seem that even if there was more information submitted then the multiple reasons for refusal indicate that there may well have been a refused application anyway, with the subsequent appeal process thereby likely to be still necessary.
13. For these reasons I do not consider the applicant to have behaved unreasonably to the extent that resulted in additional costs for the Council.

Conclusion

14. Considering all the above, for both costs applications, I find that there has not been unreasonable behaviour by either main party which has caused unnecessary expense with the appeal and the applications for costs are refused.

Mr S Rennie

INSPECTOR