



Costs Decision

Site visit made on 1 November 2022

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2022

Costs application in relation to Appeal Ref: APP/X1165/W/22/3299047 62 South Furzeham Road, Berry Head With Furzeham, Brixham TQ5 8JD

- 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 Francis for a full award of costs against Torbay Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for "Re-work existing interior layout, single storey side and rear extension in addition to roof conversion. Re-work existing rear dormers, with additional front and rear dormers and associated landscaping."
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Decision

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

Reasons

2. The National 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. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a lack of co-operation with other parties. Unreasonable behaviour can also include substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations.
4. The PPG also indicates that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. Furthermore, when defending an appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined.
5. The applicant states that they have been proactive in their engagement with the Council, that the Council was initially supportive and that they have revised the scheme to address concerns raised.
6. The Council has failed to provide a statement of case that fully explains their reasons for not reaching a decision in a timely manner. However, the details submitted with the appeal demonstrate there was a dialogue between the Council and applicant. The Council advised it had concerns with the proposal and that it would refuse the application. Some putative reasons for refusal

were provided in an email indicating that planning permission would have been refused.

7. I sympathise with the dissatisfaction and frustration of the applicant with regard to the failure of the Council to determine the application. Nonetheless, it will be seen from my appeal decision that I found harm in respect of some of those issues and conflict with the development plan. I have, therefore, dismissed the appeal and refused planning permission. Whilst the Council took longer than it should have done to determine the application, it substantiated its reasons as to why it would have refused planning permission and, therefore, did not prevent or delay development which should clearly have been permitted. In such circumstances where the applicant decided to pursue the appeal against the non-determination of the application to its end, with the Council's essential arguments against the development prevailing, the costs of an appeal cannot be considered an unnecessary or wasted expense. Even if the Council had made its decision earlier it would not have prevented the need for the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

J White

INSPECTOR