
Costs Decision

Site visit made on 29 November 2022

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

an Inspector appointed by the Secretary of State

Decision date: 04 January 2023

Costs application in relation to Appeal Ref: APP/Y1138/W/22/3298329 Ashdowne Care Home, Tiverton, Devon EX16 6SJ

- 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 Halcyon Care for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal of planning permission for the erection of single storey extension to care home.
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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.
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 an 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" and "failure to produce evidence to substantiate each reason for refusal on appeal".
5. The submissions confirm that the Council 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 or fail to produce evidence to substantiate each reason for refusal.
6. As will be seen from the Appeal Decision, I have concluded that the development proposed would accord with the policies of the development plan. The appeal scheme would not result in a significant increase in traffic movements or increase bedroom numbers at the care home, and it appears

that the proposed extension to the care home would not result in the loss of any dedicated parking space at the premises.

7. Whilst photographic evidence of some car parking use for an area to the front of the care home, had been provided in support of the Council's case, there is no evidence before me which confirms that that space was restricted for vehicle parking use under previous planning permissions, for example by reference to plans or planning conditions attached to such permissions. As such, it does not appear that the Council has provided sufficient evidence to substantiate the contention that there would be a loss of a parking space at the premises, or that the scheme, which is the subject of the appeal, would create a severe impact on the highway network.
8. As such, I find that the Council has failed to substantiate their reason for refusal, in the face of advice from its professional officers that the issue with regards to parking and impact on the highway network was acceptable. For the reasons above and for the reasons set out in the appeal decision, the proposed development accords with the policies of the development plan and I conclude that the Applicant has incurred unnecessary expense in making the appeal.

Conclusion

9. 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

10. 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 Halcyon Care 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.
11. 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