

Costs Decisions

Site visit made on 20 December 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Costs application in relation to Appeal A Ref: APP/X1118/W/22/3300437 Plot 3, The Stables, Saunton Road, Braunton EX33 1HG

- 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 Grove Caravans Ltd for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for one new residential dwelling in field.
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Costs application in relation to Appeal B Ref: APP/X1118/W/22/3300526 Plot 4, The Stables, Saunton Road, Braunton EX33 1HG

- 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 Grove Caravans Ltd for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for provision of 1 residential dwelling.
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Costs application in relation to Appeal C Ref: APP/X1118/W/22/3300528 Plot 5, The Stables, Saunton Road, Braunton EX33 1HG

- 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 Grove Caravans Ltd for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for provision of 1 residential dwelling
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Costs application in relation to Appeal D Ref: APP/X1118/W/22/3309682 The Stables, Saunton Road, Braunton EX33 1HG

- 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 Grove Caravans Ltd for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for erection of new dwelling and access track.
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Decisions

1. The applications for costs for Appeals A, B and C are refused.

2. The application for costs for Appeal D is refused.

Reasons

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.

Appeals A, B and C

4. The Applicant alleges that in each case, the Council did not engage with him constructively or proactively or reach its decision within a timely manner, i.e. within the statutory 8 week period. The Applicant also asserts that the lack of communication left him without a solution but to submit appeals against the Council's non-determinations. A further criticism levelled at the Council is the failure to factor in relevant considerations in the overall planning balancing exercise, such as the absence of a five year housing land supply and the claimed self-build benefits of the schemes.
5. The Council's rebuttal details the lengthy exchanges of emails between its officers and the Applicant and suggest that these undermine the claimed lack of communication. There is also a suggestion that though the Council did engage with the Applicant, it did not see any need to prolong discussions that it ultimately considered incapable of addressing the numerous and fundamental issues raised.
6. As far as can be deduced from the evidence, consistent with the Applicant's account of events, the first substantive communications from the Council appear to have been more than three months after the initial validation of the applications. Issues were apparently raised at this point. Then, following a change in personnel, a more consistent two-way dialogue appears to have taken place, but with a quick escalation towards an encouragement of the Applicant to withdraw the schemes or face imminent refusals, which appears harsh given the limited communication in the preceding months and apparent lack of clarity as to the reasons why. Overall, the slowness to process the applications and the approaches thereafter are suggestive of some areas for improvement on the part of the Council.
7. That said, there is some doubt in my mind about whether the appeal applications have been made in the most logical way, in relation to one another, or so as to achieve their stated intentions. Many of the alleged benefits of the schemes are laudable, but how they would be delivered is less clear and the expectation of assistance to address all such matters is rather onerous. A more considered approach may have simplified the processes and paved the way for a more constructive dialogue.
8. I do note the Applicant's agreement to remedy any issues and secure any proffered benefits appropriately, but the appeal process is unfortunately not so flexible as to afford such open-ended opportunities.
9. Considered in the round, I do not find that the appeals were unnecessary or that different outcomes would have been achieved had appropriate weight been attributed to aspects such as the absence of a five year housing land supply, as

has been set out in my decisions. Furthermore, since the appeals have been submitted, the Council has largely met the expectations of the process.

Appeal D

10. The Appeal D application was submitted on the 25 July 2022, and the appeal was received on the 25 October 2022. The Applicant suggests that the Council did not discuss this application with him at all during the months that it was being processed, let alone in a constructive or proactive manner. The point is also made in connection with this application that the Council did not issue a decision within the statutory 8 week period.
11. The Council would have been aware of Appeals A, B and C at the time of receipt of the Appeal D application. Nevertheless, the lack of communication and a decision by the Council within the statutory time period is still difficult to understand. There is a degree of overlap of the sites and similarities between the schemes, but more timely communications and/or a decision could have been made to minimise the Applicant's uncertainty and need to pursue another non-determination appeal.
12. For reasons also set out in the decision, I do not consider that Appeal D was unnecessary, given the views held by the respective parties, and the Council has not prevented or delayed development which should have otherwise been permitted, having regard to the relevant policies and other material considerations.

Conclusions

13. For the foregoing reasons, despite that there are some areas where an improved level of service should have been expected, I do not consider that the Council has deliberately behaved unreasonably, either substantively or procedurally in these cases. Therefore, wasted expense, as described in the PPG, has not been demonstrated and awards of costs are not justified.

Hollie Nicholls

INSPECTOR