
Costs Decision

Site visit made on 17 January 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Costs application in relation to Appeal Ref: APP/X1165/W/22/3301094 St Georges, Bellrock Close, Torquay, TQ2 8SD

- 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 Gilstone Partnership for a full award of costs against Torbay Council.
 - The appeal was against the refusal of prior approval under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from office to dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an 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.
3. The applicant submits that the parking space is shown on the submitted plans. It is clear however that the Council's primary concern is to ensure that this space remains available for the occupiers of the flat. It is not clear why a condition could not have been used to address this matter. A suitably worded condition would ensure that the space remains available for the occupiers of the flat on the basis that the Council considers the use of the space to be essential to make the development acceptable in terms of its highways impacts. Part 3, Paragraph W (13) of the GPDO establishes that the Local Planning Authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
4. The PPG advises that a Council may be at risk of an award of costs if it refuses planning permission on a planning ground capable of being dealt with by a condition. It is reasonable for me to apply this advice with equal weight to a prior approval appeal. There is nothing in the council's officer report to suggest that a condition was considered. This constitutes unreasonable behaviour on the part of the Council.

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

5. The applicant also submits that the Council could have agreed an extension of time to attempt to attain additional detail or clarification. There is however no requirement for the Council to seek out additional information before it makes its decision. The criteria by which the proposal should be considered is set out clearly within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which would have been easily available for the applicant to view before the application was submitted. The Council made its assessment on the information available at the time, and I am satisfied that its concerns in this regard are sufficiently reasoned such that its behaviour should not be considered unreasonable.
6. The applicant refers to the time that the Council took to issue its decision. This is however unrelated to the appeal process, and, as the PPG establishes, costs can only be awarded in relation to unnecessary or wasted expense during the appeal. This matter does not therefore constitute unreasonable behaviour on the part of the Council.
7. The applicant advises that a planning application has been made for the proposal, which has incurred additional costs. No details of this submission are before me however this was the applicant's choice and not something it was required to do while the appeal was progressing. This matter does also not therefore constitute unreasonable behaviour on the part of the Council.
8. I have found that the Council's handling of the transport impacts of the proposal constitutes unreasonable behaviour. I also need to consider whether this unreasonable behaviour has resulted in unnecessary or wasted expense on the part of the applicant. The applicant has spent time and effort addressing matters relating to transport in the appeal submission. Thus, a partial award of costs is justified.

Costs Order

9. 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 Torbay Council shall pay to Gilstone Partnership, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to matters related to transport; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. 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 an agreement as to the amount.

A Tucker

INSPECTOR