



Costs Decision

Site visit made on 6 December 2022

by B J Sims BSc (Hons) CEng MICE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2023

Costs application in relation to Appeal Ref: APP/W1145/W/22/3298786 The Laurels Inn, Petrockstowe, Okehampton, Devon, EX20 3HJ.

- 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 P and Mrs L Johnson for a full or partial award of costs against Torridge District Council.
 - The appeal was against the refusal of an application for outline planning permission for the conversion of 2 No former almshouses into 2 No units of holiday accommodation.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

Procedural Considerations

2. The Applicants are concerned that they received positive pre-application advice from Council officers but that this was not made known to the Planning Committee in deciding the subsequent formal application. I give this aspect of the application for costs no weight because such pre-application advice is given without prejudice to the outcome of a subsequent planning application and is not in the public domain.
3. However, I find that the manner in which the Council handled the application to have been confusing and potentially misleading to the elected Members of the Planning Committee.
4. First, Council officers held the view that the application should not have been made in outline because the legal definition¹ of an outline permission relates to the erection of a building, not conversion, and the proposal raised issues of potential impact on nearby designated heritage assets. At the same time, the Council did not decline to determine but validated the application, the refusal of which, on grounds of potential planning effects and not the legal objection, led to the subsequent appeal.
5. Second, the Council then exercised its statutory right to request the Applicants to provide further information on the reserved matters. This was willingly

¹ The Town and Country Planning (Development Procedure Order)(England) 2015. SI 2015 No 595 Art 2(1): "outline planning permission" means a planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more reserved matters;

provided with an offer of further liaison if required, albeit short of submitting full design details at the outline stage. That process does not have the effect that matters of detail are then no longer reserved.

6. Third, nevertheless Council officers evidently stated or implied that the application was thus subject to detailed assessment in the manner of a full application, save only for landscaping.
7. I consider that this procedure amounted to unreasonable conduct, compromising the proper consideration of the application by the Committee.
8. The subsequent appeal could not be determined for the legal reason outlined above.

Substantive Considerations

9. The Council was entitled to form its judgement that the application should be refused owing to insufficient information. However, it does not follow that, as stated in the reasons for refusal, there would necessarily be harm and conflict with development plan policy.
10. To that extent, the reasons for refusal are implicitly self-contradictory.
11. The approach of the Council was apparently founded on its stated conviction, and that of statutory consultees, as reported to Committee, that the application should have been made in full in the first place and that the submitted information was inadequate.
12. I consider that the approach of the Council amounted also to substantive unreasonable conduct.

Conclusions

13. The Planning Practice Guidance 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.
14. I have found unreasonable behaviour by the Council in terms of both procedural and substantive considerations, as described in the Planning Practice Guidance, and that this led, in practice, to unnecessary or wasted expense by the Appellants in seeking to pursue an appeal that was not legally capable of determination.
15. I conclude accordingly that a full award of costs is justified.

Costs Order

16. 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 Torridge District Council shall pay to Mr P and Mrs L Johnson 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.
17. The applicant is now invited to submit to Torridge District Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B J Sims

Inspector