



Costs Decision

Site visit made on 10 January 2023

by L Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Costs application in relation to Appeal Ref: APP/Y1110/W/22/3300296 Land and garages between numbers 39-41, Toronto Road, Exeter EX4 6LE

- 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 T Tancock of The Feeoffees of St Sidwell for a full award of costs against Exeter City Council.
 - The appeal was against the refusal of planning permission for demolition of existing garages and construction of three, 2-storey, 3-bedroom dwellinghouses, with integral cycle parking, private amenity space and first floor balcony to rear.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 31 of the PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. Paragraph 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities.
3. The Council failed to communicate with the applicant over a period of several months, despite the applicant's attempts at engagement. The validation process was protracted, and I note that the Council made some administrative errors throughout the application process. The delays resulted in the applicant having to track down missing documents, making multiple revisions to the plans and regularly chasing officers. Notwithstanding the lengthy reiteration of communication between the parties, whilst understandably frustrating, it is my view that the lack of communication was not as a result of deliberate obstruction in order to delay the process. Rather it was as a result of a particular set of circumstances at the time, including an overstretched and under resourced department. In any event the delays would not, in themselves have resulted in a different decision such that they have created wasted expense in the appeal process.
4. The applicant is concerned that no site visit was made by the Council before determination of the application. However, even if a site visit had been made by the Council in this particular case, I am not persuaded this would have ultimately avoided the need for the appeal. I consider that the details

submitted with the application would have allowed the Council to assess the proposal without necessarily entering the site.

5. Whilst I note the applicant's concerns regarding the refusal of the Council to attend a site meeting to discuss the outstanding matters, the Council are not under any obligation to do so. Given the length of time the application had been pending determination, I consider that the decision was appropriately reached on the basis of the planning merits of the proposal. On balance, I do not find that the Council were unreasonable in terms of when and how it reached its decision to refuse planning permission.
6. The delay in communicating the concerns regarding the design of the proposal seems to be for the same reasons as mentioned above, most notably an overstretched and under resourced department. It is again my view that this was not a deliberate obstruction to delay the application process. Whilst I appreciate that the outcome of the application will have been a disappointment to the applicant, despite the revision of the plans, the Council were not unreasonable in coming to that decision. Indeed, following consideration of the application on its merits alone, I have concurred with the Council on this particular matter.
7. In my view, the Council's behaviour by virtue of not undertaking the balancing exercise, required by paragraph 11 of the National Planning Policy Framework 2021, was unreasonable. However, I have carried out my own 'planning balance' in my appeal decision and concluded that the presumption in favour of sustainable development would not apply to this appeal. Therefore, the omission to carry out the balancing exercise has not resulted in any unnecessary or wasted expense in the appeal process.
8. The Council's report briefly acknowledges both national and local policy in regard to the promotion and prioritisation of housing on previously developed land (PDL). However, Policy H2 of the Exeter Local Plan First Review 1995-2011 requires development on PDL to not be detrimental to the character and quality of the local environment. For the reasons set out in the appeal decision, I too have concerns regarding the impact on the character and appearance of the area.
9. Consequently, the Council have not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

Conclusion

10. For the reasons set out above I conclude that, whilst the Council exhibited unreasonable behaviour in some respects in terms of the PPG, I find that no wasted or unnecessary expense has been incurred by the appellant in the appeal process. I conclude therefore, that the application for an award of costs should be refused.

Laura Cuthbert

INSPECTOR