
Costs Decision

Site visit made on 13 January 2023

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Costs application in relation to Appeal Ref: APP/W1145/W/22/3299973 Land at Torridge Road, Appledore EX39 1SF

- 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 Torridge District Council for a full award of costs against Mr M Harris of Harco Trading Ltd.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of three dwellings and associated works.
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Decision

1. The application is refused.

Reasons

2. 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.
3. For appellants, Planning Practice Guidance sets out that they are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Furthermore, that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
4. The Council is seeking a full award of costs on the basis of substantive grounds, including that the development is clearly not in accordance with the development plan and that the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period.
5. I am mindful of how I assessed the main issues under the appeal when finding that the proposal would not harm the Taw Torridge Estuary SSSI. Furthermore, the issue of location required careful consideration of housing land supply and housing delivery and whether the proposal could reasonably come forward outside of the undeveloped coast.

6. I am also mindful of the previous appeal decision at the site. This was for very similar development and many of the material considerations, including the effect of development to the south east¹, were the same. However, the previous appeal was not decided in the same five year housing land supply context. As such, some of the circumstances surrounding the proposal have materially changed subsequent to the previous appeal decision.
7. The Council is also seeking costs on the basis of procedural grounds, including the introduction of fresh and substantial evidence necessitating extra expense for preparatory work that would not otherwise have arisen.
8. Fundamentally, the appellant was within their rights to make an appeal on the basis of non-determination despite ongoing discussions about some of the matters relating to the proposal.
9. Moreover, there was no comfort given regarding the timeliness of the outstanding comments, and it was clear that the Council intended to refuse planning permission on the basis of other matters alone. As such, it was not unreasonable to pursue an appeal against non-determination at that stage.
10. Whilst there was appreciable fresh evidence submitted and accepted under the appeal, I am not persuaded that it was substantial. For example, the Council's coastal engineer's comments about the slope stability assessment data remaining the same across the documents. Consequently, the level of new analysis required would not have been unreasonable.
11. There were changes to the recommendations within the slope stability assessment. However, these were limited, and the Council has not demonstrated how this was unreasonable in light of the fresh evidence relating to the geotechnical ground investigation report.
12. The geotechnical ground investigation report was more substantial but given the extent of the Council's coastal engineer's comments were limited in this regard, and based on my own analysis of the document under the appeal, I cannot conclude that it was substantial either.
13. Even if I found that the appellant introduced fresh and substantial evidence, it is important to reflect on the circumstances that required this evidence in the first place.
14. If the Council's coastal engineer's comments were made available within the prescribed period, it is highly likely that the appellant could have addressed them as part of the application. As such, I agree with the appellant's contention that the time the Council has spent on the new evidence would have been necessary in any event.
15. The Council cite another appeal² in the area to support their contentions about the relevance of the five year housing land supply position. However, this other appeal was not determinative in my assessment of the appeal which was considered on its own merits. Consequently, it does not change my findings on this costs application either.

¹ Whilst this was not built out at the time of the previous appeal decision, the details of the development as approved were factored into the inspector's assessment.

² APP/W1145/W/21/3283161

16. The Council highlight that the proposal received significant objections from consultees. However, this is not in itself indicative of the appeal's prospects and has not been determinative in my assessment of this costs application.
17. Altogether, the proposal presented a number of issues which required careful balance. Consequently, I cannot find that the proposal substantively reruns the previous appeal at the site because of the changing five year housing land supply position.
18. Furthermore, the fresh evidence submitted with the appeal was not substantial in my estimation and even if it was, the need for the evidence arose because of circumstances outside of the appellant's control. Altogether, the appellant has not acted unreasonably in pursuing the appeal.

Conclusion

19. For the reasons given, the application for a full award of costs is refused.

Liam Page

INSPECTOR