



Costs Decision

Site visit made on 6 April 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Costs application in relation to Appeal Ref: APP/X1165/W/22/3306764 3 Midvale Road, Paignton TQ4 5BD

- 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 ALD Developments for a full award of costs against Torbay Council.
 - The development proposed is erection of two storey rear/side extension and conversion of building (including the extension) into 6 apartments.
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Costs Decision

1. The application for costs is refused.

Costs Regime

2. 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. Whilst parties normally meet their own expenses, they are also expected to behave reasonably to support an efficient and timely process. Costs awards can relate to either the procedural handling of the matter or substantive aspects, concerning the merits of the appeal.
3. Examples of types of unreasonable behaviour by a local planning authority (LPA) of a procedural nature includes:
 - lack of co-operation with the other party or parties; and
 - delay in providing information or other failure to adhere to deadlines.
4. In terms of the substance of the matter under appeal, LPAs may be at risk of a costs award in the following circumstances (not exhaustive):
 - by preventing or delaying development which should clearly be permitted;
 - failure to produce evidence to substantiate each reason for refusal;
 - vague, generalised or inaccurate assertions about a proposal's impact; and
 - not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management.
5. Appellants can be at risk of costs for similar reasons to the above. In a substantive context, appellants can be liable for an award of costs if material considerations are advanced and inadequate supporting evidence is submitted.

Reasons

6. The Applicant indicates that the Council has subjected the Applicant to the costs of submitting the appeal due to its failure to determine the application. It

is also alleged that the Council has failed to properly consider the submitted information, issued a decision notice after the non-determination appeal was lodged and allowed the Applicant to incur wasted expense through the appointment of an arboriculturist whose input was rejected against established practice.

7. The Council also indicates that because an agreement could not be reached between the parties, a refusal of planning permission was inevitable and the appeal unavoidable as a result. It is also suggested that information was provided throughout the course of the consideration of the application and beyond, through a second 'free go' application, specifically to address the arboricultural issue.
8. In respect of the arboricultural issue, I note that the originally submitted application form claims that there were no trees or hedges on the development site and none that would influence the development or that might be important as part of the local landscape character. Given the objection of the Council's Tree Officer, albeit submitted late in the process, this was clearly not the case and there was a need to appoint an arboriculturist to address the matter in any event. Whilst the information was not accepted by the Council as part of the appeal, I do not consider that the expense was wasted.
9. In respect of the internal floorspace, external amenity area and refuse storage aspects, it appears that additional clarification was sought from the Applicant and was provided towards the end of the 8 week period for determination. It then appears that this information was not analysed in sufficient detail to enable the Council to agree the acceptability of these aspects. In between the submitted information needing to be further clarified and the Council's lack of critical analysis, there has been some wasted time and expense. However, it is hard to precisely determine the degree to which the Applicant has been put to a degree of wasted expense by the Council in dealing solely with these aspects, though my expectation is that it would be limited, not having necessitated any further specialist reports or information.
10. I agree that it was unusual for the Council to have issued a decision having already been informed that the appeal against non-determination had been submitted. Even if the Applicant had been made aware that the recommendation was likely to be one of refusal, there appears little explanation as to why the decision was not made in time and ultimately why it was decided when the appeal process had already commenced. Nevertheless, it also appears that the parties were unlikely to agree on the main issues in the appeal. As I have found conflict with the development plan, the development has not been unreasonably delayed and nor was the appeal avoidable.
11. Therefore, as detailed above, the appeal could not have been avoided in any event, and, though there were some delays, there is no evidence that the Council has intentionally behaved unreasonably, either substantively or procedurally in relation to the appeal application or the appeal itself. Material wasted expense, as described in the PPG, has not been demonstrated and, in the circumstances, an award of costs is not justified.

Hollie Nicholls

INSPECTOR