



Costs Decision

Site visit made on 12 June 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/Q1153/W/22/3292611

Land at Plymouth Road, Tavistock, Devon PL19 9DS

- 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 Baker Estates Limited for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of the Council to grant permission for development described as (1) full application for the erection of 44 residential dwellings, formation of accesses, associated open space, landscaping and infrastructure; and (2) outline application for 0.76ha of commercial land (Use Class E(g) – formerly B1), with means of access to be determined.
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Decision

1. The application for an award of costs is refused.

Reasons

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.
3. The applicant asserts that the Council acted unreasonably on a number of grounds summarised as:
 - a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - b) failure to produce evidence to substantiate each reason for refusal on appeal;
 - c) making vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis;
 - d) acting contrary to, or not following, well-established case law;
 - e) not determining similar cases in a consistent manner;
 - f) introducing a new issue; and
 - g) not reviewing their case promptly following the lodging of an appeal against refusal of planning permission.
4. The applicant's claim centres upon the assertion that the appeal scheme complied with the development plan and should therefore have been approved. I too concluded that the scheme complied with the development plan taken as

a whole. However, this does not in itself indicate that the applicant's claim should succeed.

5. The scheme's compliance with Policy TTV17 of the Plymouth and South West Devon Joint Local Plan (the JLP) which sets out the site allocation was not in dispute. Nor was the fact that viability constraints prevented the scheme from making a contribution towards affordable housing. Part 5 of Policy DEL 1 of the JLP nonetheless states that in determining whether or not to grant planning permission, the Council will have regard to the overall economic, social and environmental benefits of the development and whether, on balance, some relaxation of planning obligations is justified. In other words, in cases where non-viability is demonstrated it remains open to the Council to undertake a balance. In this regard it is clear from the decision notice that the outcome of this exercise was not in the scheme's favour.
6. In undertaking the balance, it was again open to the Council to attach weight to benefits as it saw fit. Here I share the applicant's view that the scheme's broader benefits and its contribution towards delivering the site allocation carries much greater weight than its failure to provide affordable housing. The Council's officers presumably thought the same when assessing the scheme. However, the Committee was not bound to reach the same view.
7. The rationale underpinning the decision is of importance. At appeal the Council has clearly sought to substantiate its case by advancing evidence to support the weight it places on affordable housing delivery, together with considerations which it believes affect the balance. It appears that some of these considerations were not explicitly raised at an earlier stage. However, insofar as the application was refused on the basis of a resolution by Committee, the lack of direct correspondence between the reasoning advanced prior to and after the decision is not wholly unusual.
8. The principal consideration advanced was the Council's resolution to approve an alternative scheme (the alternative scheme), which is held to demonstrate that affordable housing could be delivered on site. This is now disputed between the parties, and the matter remains unresolved. However, insofar as the Committee clearly placed importance on affordable housing provision, the existence of this alternative scheme was of some relevance in determining the weight to be attached to the benefits of the appeal scheme as required by Policy DEL1. Again, whilst I agree with the applicant that the appeal scheme makes a more direct response to the requirements of Policy TTV17, the Council was clearly entitled to look beyond this and at broader policy objectives.
9. The Council also made reference to the type of housing to be provided, and in so doing it was aware that this risked being perceived as broadening the terms of its objection to the scheme. It was therefore careful to clarify that this was not intended. The matter otherwise had some, albeit very limited relevance. That is not to say however that reference to such matters was necessarily vague, generalised or inaccurate.
10. The applicant points to the fact that the Council raises no objection to the commercial element of the scheme, and that the residential element of the scheme matches that within the alternative scheme. That does not however form a direct basis for approval under the terms of Policy DEL1.

11. Moreover, insofar as the alternative scheme and appeal scheme differ in their overall composition, the Council's resolution to approve the alternative scheme cannot be taken to form a basis for approval of the appeal scheme. The decision was not therefore inconsistent.
12. Given my findings above, and notwithstanding the fact that I have allowed the appeal, I cannot conclude that the Council prevented or delayed a development which should clearly have been permitted. Nor, within this context, can I see the relevance of ground (g) of the applicant's claim.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated.

Conclusions

14. For the reasons set out above, I conclude that the applicant's claim for an award of costs should be refused.

Benjamin Webb

INSPECTOR