



Costs Decision

Site visit made on 27 July 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Costs application in relation to Appeal Ref: APP/Q1153/W/23/3315904 Holbrook, Broadwoodkelly, WINKLEIGH EX19 8EF

- 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 Chris Conway for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. PPG includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, "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" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
4. The applicant contends that the Council has behaved unreasonably because it failed to consider the 'six tests' for conditions in accordance with paragraph 56 of the National Planning Policy Framework, 2021 and relevant established case law; misapplied the requirements of s73 of the Town and Country Planning Act 1990 (the Act); failed to consider the potential fallback position; disagreed with a technical statutory consultee with no evidence or justification and failed to substantiate its reasons for refusal.
5. In its appeal statement the Council explains why the disputed condition satisfies the six tests and that it considers the proposed holiday use would be different in character to the approved development. The Council's overall point is that a holiday use would result in a greater demand for travel via private motor vehicles in an unsustainable location. In this regard, the Council's decision, and its position in the appeal, is ultimately underpinned by its planning judgement. As such, it was not unreasonable of the Council to conclude as it did, notwithstanding the context of the relevant case law.

6. Moreover, within its Officer Report the Council has explained why the planning application was determined as it was. It took into account the basis of what could be carried out as part and parcel of a dwellinghouse already permitted by the planning permission, in the context of an application under s73 of the Act.
7. Local Planning Authorities are not bound to accept the recommendations of technical statutory consultees. However, as noted above the PPG provides that Councils are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and where the reasons given for refusal is based on vague or generalised assertions about the impact of the scheme.
8. The Council's decision notice clearly identifies the policies of the development plan against which it was considered the proposal would fail to comply with. The Council provided a comprehensive Officer Report and statement of case, which had regard to the planning history of the site and gave a clear and coherent explanation in support of its position.
9. In reaching this view, the Council has explained why this application was determined as it was, taking into account previous decisions on the appeal site, and has substantiated its reasons for refusal having regard to development plan policies.
10. Whilst I do not find that the Council's planning arguments particularly convincing, a reasonable basis has nonetheless been made to substantiate the reasons for refusal.
11. The PPG advises that, where Local Planning Authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Conclusion

12. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. Therefore, an award of costs is not justified.

J White

INSPECTOR