



Costs Decision

Site visit made on 29 August 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09.10.2023

Costs application in relation to Appeal Ref: APP/U1105/W/23/3315663 Brake View, Rockbeare Hill, Rockbeare EX5 2EZ

- 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 Ms Susan Wakley-Stoyle for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for erection of a replacement two storey 4-bed detached dwelling.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

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. The PPG also says that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour which may result in an award of costs include but are not limited to:- prolonging the proceedings by introducing a new reason for refusal; and the withdrawal of any reason for refusal.
3. The applicant states that the costs application is submitted on the grounds that the appeal should not have been necessary given the reason for refusal was factually incorrect. They add that unnecessary and wasted expense was incurred through the preparation and submission of the appeal, including drafting a statement of case and administrative work.
4. I agree with the applicant that the Council behaved unreasonably by issuing a decision notice that included a reason for refusal that had been addressed prior to the Council's determination of the application. However, based on the evidence before me, it is clear that the Council had intended to refuse the scheme on arboricultural grounds alone and that this was communicated to the applicant's agent ahead of their decision being issued. Therefore, it is likely that the applicant would have appealed the decision and expected to have to defend this matter.
5. The applicant states that they submitted the appeal in an attempt to reverse the refusal of the planning application by the Council as it is not possible for the Council to issue a corrected decision notice. In doing so, the applicant provided a statement that covered flood risk matters set out in the reason for

refusal. As such, I am satisfied that wasted or unnecessary expense has been incurred in respect of matters relating to flood risk during the appeal process.

Conclusion

6. 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 wasted or unnecessary expense has been incurred by the applicant in the appeal process in relation to addressing matters of flood risk only, not arboricultural matters. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting part of the Council's reason for refusal is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Devon District Council shall pay to Ms Susan Wakley-Stoyle, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to flood risk, such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Mid Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Hills

INSPECTOR