



Costs Decision

Site visit made on 11 October 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Costs application in relation to Appeal Ref: APP/P1133/W/23/3320229 Dolphin Inn, Fore Street, Kenton, Devon EX6 8LD

- 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 Dare Utility Services Ltd for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of planning permission for Sub-division of part of the public house to form a new dwelling.
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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. The applicant considers that the Council acted unreasonably by: refusing permission for the appeal proposal when the principle of development had already been established by a previous grant of planning permission for a similar scheme; not accepting amended drawings during the determination process; including a refusal reason relating to flood risk despite dry refuge being provided; and not applying the appellant's previous financial contribution for habitat mitigation to the appeal proposal.
3. Planning permission for a similar scheme was granted in 2016 under the same Local Plan as now. However, the Kenton Parish Neighbourhood Plan 2018-2033 became part of the adopted development plan after that permission was granted. Furthermore, that permission, which has also now lapsed, does not indicate that the appeal proposal is acceptable in relation to existing policy and guidance and should have been granted permission.
4. Prior to the decision notice being issued on the planning application now the subject of the appeal, the applicant submitted amended drawings to resolve the Council's concerns. The available evidence indicates that the Council did consider those drawings but identified some concerns with them and informed the applicant that the proposal would be determined on the originally submitted plans. Although I can understand the applicant's frustration that the amended drawings – which involved additional cost for the applicant – were not accepted by the Council, the Council was under no obligation to accept them even if the amendments resolved its concerns. In addition, it was not unreasonable for the Council to opt to determine the proposal on the originally

- submitted plans given the amended plans raised some other concerns and would have also required re-consultation.
5. The plans which the planning application was determined against do provide dry refuge for occupants. However, the National Planning Policy Framework and relevant guidance identify the need for safe access and escape routes for relevant development and the provision of dry refuge does not negate this requirement. Although emails between the Council's Planning Officer and drainage team make reference to the provision of safe access or dry refuge, the drainage team's formal consultation response does also not indicate that it would be acceptable for only either safe access or dry refuge to be provided. The lack of details relating to safe access therefore justifies the Council's second reason for refusal. If the applicant considers that amended plans and/or the provision of further details covering flood risk can resolve the Council's concerns, then it is open to them to submit a new planning application.
 6. It has been put to me that the Council could have transferred the applicant's habitat mitigation contribution for a previous scheme over to the planning application now the subject of the appeal. Even if the Council had transferred that contribution, which it acknowledges it could have done, the lack of a planning obligation (or other similar mechanism) means that any financial contribution towards habitat mitigation would not have been sufficiently secured against the appeal proposal. On this basis, even though the Council sets out that it would not have included the third reason for refusal had it transferred the contribution, it seems to me that the competent authority could not have ascertained that the development proposed would not adversely affect the integrity of the designated sites. The Council's third reason for refusal is therefore justified. With the planning application also refused for other reasons, it was not unreasonable for the Council to not liaise further with the applicant with respect to producing a planning obligation (or other similar mechanism) to secure the financial contribution (wherever it came from).
 7. Several months elapsed before the Council issued its decision notice. However, the available evidence indicates that the Council engaged with the applicant during this time in an attempt to resolve its concerns with the proposal. Given the applicant's amended plans raised other concerns, it seems likely that the planning application would have been refused, albeit for different reasons, even if the Council had accepted them. As such, it seems to me that an appeal could not have been avoided in any event.
 8. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

T Gethin

INSPECTOR