The Planning Inspectorate

Costs Decision

Site visit made on 26 September 2023

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2023

Costs application in relation to Appeal Ref: APP/Q1153/D/23/3320793 Southmoor, road from Thorndon Cross to Cowsen Cross, Thorndon Cross, Devon EX20 4NF

- 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 Duncan Creed for a full award of costs against West Devon Borough Council.
- The appeal was against the refusal of planning permission for a rear extension to the existing dwelling to comprise a ground floor garage and living accommodation on the first floor.

Decision

1. The application for a full 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. The appeal followed the refusal of permission on 2 February 2023 of an application made on 8 July 2022 for a rear extension to the existing dwelling to comprise a ground floor garage and living accommodation on the first floor. There were three reasons for refusal which were concerned with the impact of the proposal upon the setting of the host building and the setting of Dartmoor National Park, and the retention of smaller homes. My decision, which accompanies this costs decision, disagreed with the Council's decision and allowed the appeal.

4. The appellant's costs application is based upon the claim that the Council have relied on the Supplementary Planning Document (SPD) in place of the adopted development plan policies, namely Policy TTV29 of the Plymouth and South West Devon Joint Local Plan (JLP). It is also claimed that the Council have fabricated a policy objective to retain a supply of smaller homes that is not present within the JLP and that the Council have not fully taken into account the Landscape and Visual Assessment (LVA) submitted by the appellant.

5. The Council's rebuttal sets out that they do not consider the SPD supplants or overtakes the primacy of the development plan, but it does form a material consideration and provides contextual guidance to applying Policy TTV29(5). The rebuttal goes on to explain the Council's position in respect of retaining a supply of smaller homes, which is grounded in policy throughout the development plan, including in Policy DEV8, and Policy TTV29 serves to support that objective. The Council have also asserted that the LVA was taken into

account when determining the application, they just disagreed with its conclusion.

6. SPDs form an important supplementary part of the overall development strategy for an area. They help provide guidance on how to interpret and implement planning policy. I consider that the Council did not give greater weight to the SPD over the adopted development plan policies. They used the guidance to fully assess the proposal against the criteria of Policy TTV29(5). The Council were justified to use the SPD guidance in this manner and such actions do not constitute unreasonable behaviour.

7. I have little substantive evidence before me that the Council failed to have full regard to the LVA submitted by the appellant. I acknowledge that the LVA was not specifically mentioned in the officer report. However, the Council are clear in their rebuttal that they had regard to the LVA but did not agree with the conclusion. Essentially, the matter is a disagreement between the two parties on the landscape impact, and this does not demonstrate that the Council have acted unreasonably in this respect.

8. On the final claim, namely that the Council have fabricated a policy objective to retain a supply of smaller homes that is not present within the JLP, there is an aim and objective of the development plan to ensure that smaller homes are not lost. The Council have exercised their duty under Section 38(6) of the Planning and Compulsory Purchase Act 2004 as they believe that the loss of smaller homes is contrary to the development plan. I agree to a certain extent, but I have considered in my appeal decision that this particular aim and objective does not specifically apply to proposals for the extension of existing dwellings under Policy TVV29(5). Essentially, the Council have interpreted the planning policy in one way, and I have interpreted it in another. This is a matter of planning judgement and I do not consider that the Council have wholly fabricated a policy objective that is not present in the JLP. As such, I find that the Council have not acted unreasonably in this respect either.

9. Having regard to all of the above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Reeves

INSPECTOR