
Costs Decision

Site visit made on 7 November 2023

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH November 2023

Costs application in relation to Appeal Ref: APP/K1128/W/22/3303945 Fort Charles, Cliff Road, Salcombe, Devon, TQ8 8JU.

- 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 Tom & Vicky Todd for a full award of costs against South Hams District Council (the LPA).
 - The appeal was against the refusal of planning permission for a replacement dwelling, extension and remodelling of summerhouse and associated landscaping.
-

Decision

1. The application is granted, insofar as it relates to a partial award of costs, in accordance with the terms set out in the Order below.

Reasons

2. The Planning Practice Guidance 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. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not add to development costs through avoidable delay. Local planning authorities are also at risk of an award of costs where they refuse permission on a planning ground capable of being dealt with by conditions.
4. Within the appeal decision, I found that the proposal would have harmful effects and concluded that the appeal should not succeed. The LPA did not therefore prevent or delay development that should clearly have been permitted. It also properly identified conflict with the development plan.
5. The LPA is not bound to accept the advice of technical or specialist consultees. In determining the application, the LPA took these responses, as well as those from other consultees, into account along with relevant development plan policies and other material considerations.
6. The Planning Officer's detailed report clearly identifies the relevant issues and is specific in identifying harm to interests of acknowledged importance. It is reasonable to assume that the Planning Officer is professionally qualified, familiar with the site and surroundings, and experienced in assessing the impact of development proposals within the South Hams. Moreover, it is not unusual for professionals to disagree upon the likely impacts of a development. The essence of LPA's first reason for refusal is soundly based and robust.

7. Notwithstanding the above, I have some sympathy for the applicants over the LPA's handling of the application. It would appear that the author of the planning report is the same officer who two weeks earlier had informed the applicants' agent that the proposal would be recommended for approval. There may well be a sound justification for this change in stance. However, on the basis of the information before me, it is unclear what caused this.
8. In the absence of any explanation, I can only find that this apparent volte-face by the planning officer amounts to unreasonable behaviour on the part of the LPA. However, as the LPA did not prevent development that should clearly have been permitted, such behaviour did not cause the applicants to incur any unnecessary expense in attempting to refute the first reason for refusal.
9. I also found within the appeal decision that the proposal would not compromise highway safety interests. When considering matters relating to the parking and turning of vehicles within the site (second reason for refusal) it was open to the LPA to have requested revisions to the proposed layout so as to determine whether or not this would overcome its concerns regarding highway safety. This would have reflected the approach to decision-making in the National Planning Policy Framework. For whatever reason, the LPA deemed this to be inappropriate. Even so, the matter was still capable of being addressed by way of a suitably worded planning condition.
10. Regardless of the above, no cogent evidence has been presented to demonstrate that the proposed replacement dwelling, when occupied, would result in any significant increase in traffic or pose a serious risk to highway safety interests. In refusing permission on highway grounds and in failing to substantiate its concerns on this matter, the LPA has behaved unreasonably. This in turn, has caused the applicants to incur unnecessary expense in refuting the second reason for refusal.
11. Given all of the above, I conclude that although a full award of costs would not be justified, the LPA's unreasonable behaviour in respect of car parking and turning within the site, which caused the applicants to incur the unnecessary expense of this aspect of the appeal, justifies a partial award of costs.

Costs Order

12. 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 South Hams District Council shall pay to Tom & Vicky Todd the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in responding to the Council's second reason for refusal (vehicle parking, turning and access).
13. The applicants are now invited to submit to South Hams 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Neil Pope

Inspector