



Costs Decision

Site visit made on 14 November 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2023

Costs application in relation to Appeal Ref: APP/X1165/W/23/3317476 Langley Manor, Teignmouth Road, Torquay TQ1 4SY

- 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 Dominic Green for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for the construction of seven dwellings with details of access and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process. It is also clarified in the PPG that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, though behaviour and actions at the time of the planning application can be taken into account in the consideration of whether costs should be awarded or not.
3. The applicant's application for costs relies on the procedural matter of whether a request for surveys and documents (including a transport assessment, tree surveys, Ecologist surveys and Architect drawings) should have taken place at the point of validation as opposed to through the application process. It is alleged that it was evident at the outset that the application was to be refused and the information that was supplied was overlooked. The applicant states that if they had known the application were to be refused at the outset, the costs associated with the information and surveys requested could have been avoided.
4. The Council state that they requested information from the applicants in accordance with the National and published Local Validation Lists operative at the time of submission and in accordance with statutory consultee requests. I have no substantive evidence before me to suggest otherwise. The Council also state that the additional information requested was needed to assess whether the proposal was acceptable or could be made acceptable within the constraints of the submitted proposal and description of development, highlighting that the description of the proposal changed within the application process.
5. The PPG states that an application for outline planning permission allows for a decision on the general principles of how a site can be developed. Furthermore,

the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) states that an application for outline planning permission does not need to give details of any reserved matters. However, whilst the application was in outline form, details of access and landscaping were for consideration. Given the particular constraints of the site, I find it is reasonable that the relevant surveys and information were requested in order for the Council to assess both the principle of the proposal, and those detailed matters before them. Indeed, I note the applicant acknowledges the necessity of providing the surveys and information throughout the planning process.

6. Moreover, as I have found in the main decision, given the issues and the potential to negate any planning permission granted, matters including drainage, highways and protected species could not be left to a planning condition. It follows that I agree with the Council that these matters should be resolved before planning permission (even an outline permission) is granted rather than leaving it to a planning condition.
7. There is no evidence that the Council had pre-determined the application, and indeed requests for further information indicate a positive and proactive approach in order to address issues arising from the proposal and to seek to resolve them. Finally, the Council state that it operates a pre-application advisory service which can help establish which documents will be required with a submission. Whilst I note the applicants concerns that the non-utilisation of this service is a dereliction of duty, a pre-application service is voluntary, and the Council cannot require an applicant to utilise such a service. I understand in this instance the applicant chose to submit the application without using the pre-application advisory service for this particular proposal.
8. Drawing all these matters together, no additional information relating to the proposal was requested by the Council during the appeal process. Whilst I appreciate that the outcome of the application will have been a disappointment to the applicant, the Council was not unreasonable in coming to their decision, or in their request for the application to be accompanied by the additional requested information.
9. As a result, it follows that in terms of the issues raised by the applicant in the costs claim that relate to the appeal process, I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred. For this reason, and having regard to all other matters raised, an award of costs is not warranted.

S Harrington MA MRTPI

INSPECTOR