



Costs Decision

Site visit made on 18 December 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Costs application in relation to Appeal Ref: APP/X1118/W/23/3324407 Riverside House, Newnham Bridge, Road From Newnham Bridge To Fortesque Cross, Umberleigh, Devon EX37 9EU

- 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 Mrs J Glenister for a full award of costs against North Devon District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing workshop building and erection of a detached house with an integral garage, amenity space, car parking, access and landscaping, together with a change of use from two houses to one house by the re-integration of an existing annex dwelling into the main house.
-

Decision

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

Preliminary Matter

2. The description of development in the banner heading above is taken from the planning application form, albeit with the word 'proposed' omitted as this word does not refer to an act of development.

Reasons

3. 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.
4. The PPG includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
5. The applicant contends that the Council has behaved unreasonably because it has not properly exercised its duty to have regard to the provisions of the development plan, and the development plan as a whole. That the Council did not consider Policy ST02 of the North Devon and Torridge Local Plan 2011-2031 (adopted October 2018) (LP), which supports the redevelopment of previously developed land (PDL), and that the Council had regard to an irrelevant Policy DM26 of the LP. Additionally, that the Council failed to take

into account other material considerations including that the proposal would replace an existing building and provide a low/zero carbon energy design and other landscape and biodiversity improvements.

6. In the appeal, I found that the proposed development would not be in accordance with development plan policies, or the development plan when taken as a whole. I went onto consider material considerations. However, that is very much a matter of planning judgement, balancing harm against benefits to arrive at a final decision.
7. The Council's Application Report (AR) describes the proposed development and is clear. It refers to Policy ST07 of the LP which is a key policy in this case. The parties agree that the appeal scheme would be in conflict with LP Policy ST07. The Council's AR made an assessment of the weight that should be attached to the fallback position. The Council was entitled to form its view that the fallback position attracts little if any weight and it was not unreasonable of the Council to conclude as it did.
8. The description of development includes the re-integration of a dwelling into the main house. Consequently, the appeal scheme would not result in a net increase in dwellings at the appeal site. As such, it was not unreasonable of the Council to have regard to Policy DM26 of the LP. Moreover, the planning statement submitted with the application makes reference to this policy.
9. The AR sets out the concerns including regarding the siting and scale of the proposed dwelling and includes imagery comparing the existing building and the appeal scheme.
10. Whilst the Council does not refer to Policy ST02 of the LP, it maintains that its concerns related to the conflict with Policy ST07, as well as the character and appearance of the area, would not have been outweighed. There is a need to consider whether the scheme complied with the development plan as a whole, rather than against any individual policy. Therefore, even though I have found differently to the Council with regard to the suitability of the location in the appeal decision, the evidence indicates that the Council would have refused planning permission regardless of this.
11. The Council substantiated its reasons as to why it would have refused planning permission and, therefore, did not prevent or delay development which should clearly have been permitted. It will be seen from my appeal decision that I found harm in respect of some of those issues and conflict with the development plan taken as a whole. In such circumstances where the applicant decided to pursue the appeal against the non-determination of the application to its end, with the Council's essential arguments against the development prevailing, the costs of an appeal cannot be considered an unnecessary or wasted expense. An appeal would have been required in any case and so this has not resulted in any unnecessary expense on the part of the appellant.
12. Overall, the Council's decision and reasoning is not so inadequate or irrational as to amount to unreasonable behaviour. The Council clearly substantiated its case with specific reference to the proposed development. I am satisfied that the Council adequately set out its position. Even if the Council had made its decision earlier it would have not prevented the need for the appeal.

Conclusion

13. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated and that, therefore, an award of costs is not justified.

J White

INSPECTOR