



Costs Decision

Site visit made on 3 January 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Costs application in relation to Appeal Ref: APP/W1145/W/22/3312919 Land at Grid Reference 238550 121287, Parkham, Devon

- 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 Pearce Construction (Barnstaple) Ltd for a full award of costs against Torridge District Council.
 - The appeal was against the refusal of planning permission for development described on the planning application form as, "Development for 5 residential properties and Associated Works".
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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.

Preventing or delaying development which should clearly be permitted

3. In the associated appeal decision I found that the proposed dwellings would not be in a suitable location, having particular regard to the Council's spatial development strategy for the area, that the proposed development would conflict with the development plan when considered as a whole, and that the other considerations do not indicate that the appeal must be determined otherwise than in accordance with the development plan.
4. The applicant has argued that the Plans Committee incorrectly interpreted relevant policy and applied an out-of-date policy in their decision-making. However, it is clear from the conflict with the development plan and the modest benefits that would arise from the proposed development, as identified in the associated appeal decision, that this is not a case where the proposed development should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations (including paragraph 11 d) ii. of the Framework which was engaged at the time of the Council's decision).
5. Rather, the Council were required to make a balanced planning judgement. In doing so, their final decision was within the range of reasonable possibilities open to them in the circumstances outlined above. Thus, the Council's behaviour was not unreasonable in relation to this ground.

Vague, generalised or inaccurate assertions about a proposal's impact

6. At planning application stage, the applicant submitted a Transportation Technical Note (including a revised version), and a Flood Risk & Drainage Technical Note. Taking account of the advice received from relevant statutory consultees, the Council's Committee Report stated that the impacts of the proposed development in relation to highways and drainage matters would not be unacceptable.
7. The Plans Committee Meeting was held on 4 November 2022. Given that, as mentioned above, a Transportation Technical Note had previously been submitted as part of the planning application, it is unclear why the changes to the Highway comments were said in the Minutes to be 'made without a proper Transport Assessment'. Reference is made within the Minutes to 'Highway issues', but apart from the mention of Policy DM05 of the Local Plan¹, no specific detail is provided as to what those highway issues might entail.
8. The Minutes of the meeting are equally vague with respect to the potential impact of the proposed development in relation to drainage / sewerage capacities within the village. Apart from a generalised reference to local infrastructure facing mounting strains, the only direct mention of these specific matters in the Minutes are a brief reference to Policies ST03 and DM04 of the Local Plan, and a response to a query, where it was clarified that it would be the responsibility of South West Water to improve the relevant sewage facilities if planning permission were granted.
9. At the appeal stage, the Council chose to withdraw the highways and drainage / sewerage issues from its reasons for refusal, which, whilst good practice, indicates that these reasons for refusal could not reasonably be defended.
10. Taking all of the above into account, I find that the Council made vague and generalised assertions about the potential impact of the proposed development, which were unsupported by any objective analysis, contrary to the advice in the PPG², in relation to the issues of highways and drainage / sewerage. This constituted unreasonable behaviour.
11. I have had regard to the Costs Decision associated with appeal decision Ref APP/W1145/W/21/3279537. Although I note that the Inspector found that the Council swiftly addressed an issue in less than a page of its appeal statement, logically without substantive cost, it is not always the case that brevity arises from an absence of time and effort expended.
12. In this case, it is evident that drafting the relevant text in the applicant's Appeal Statement involved the consideration of a number of documents submitted at application stage, and required a comparative analysis of the Minutes of the Plans Committee Meeting set against the submitted evidence. This indicates that time and effort was extended in real terms.
13. As such, the unreasonable behaviour identified above caused wasted expense for the applicant in respect of professional consultancy fees associated with responding to the issues of highways and drainage / sewerage at the appeal stage. Hence, the application for costs succeeds to that extent only.

¹ North Devon and Torridge Local Plan 2011-2031 (adopted 2018)

² Paragraph 16-049-20140306

Failure to produce evidence to substantiate each reason for refusal on appeal

14. As mentioned above, the Council withdrew the highways and drainage / sewerage issues from its reasons for refusal at the appeal stage. Therefore, it was not necessary for the Council to attempt to substantiate these particular reasons for refusal at the appeal stage. The Council's behaviour was not unreasonable in relation to this ground. This does not however alter my findings above.

Conclusion

15. I therefore find that unreasonable behaviour resulting in wasted expense in the appeal process, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 (as amended) 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 Torridge District Council shall pay to Pearce Construction (Barnstaple) Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the issues of highways and drainage / sewerage at the appeal stage; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Torridge 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.

Alexander O'Doherty

INSPECTOR