



Costs Decision

Site visit made on 27 February 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2024

Costs application in relation to Appeal Ref: APP/W1145/W/23/3320230 Land At Grid Reference 250747 122921, Huntshaw, Devon EX38 7HH

- 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 Torridge District Council for a full award of costs against Mr S Moore.
 - The appeal was against the refusal of outline planning permission for 3 self-build local occupancy residential dwelling plots.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the appellant behaved unreasonably on substantive grounds, because the appeal had no reasonable prospect of succeeding.
4. PPG¹ lists examples of what type of behaviour may give rise to a substantive award against an appellant. This includes where the development is clearly not in accordance with the development plan, and no other material considerations such as national policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
5. It will be seen from my decision that I found the proposal was not in accordance with the development plan. Nevertheless, at the time the Council made its decision, and the submission of the appeal, the Council were unable to show a five year housing land supply. Although the appellant suggests that this was not the foundation of their substantive case², I cannot agree. From my reading of their Statement of Case, this matter was a central plank of their argument in favour of the proposal. Indeed, paragraph 6.1.1, which is the opening paragraph of the appeal case section, refers to the housing land supply and the application of paragraph 11 of the National Planning Policy Framework.
6. Linked to this principal point, the appellant goes on to refer to policy ST21 of the development plan. Moreover, references to the 'relaxation' of other

¹ Paragraph: 053 Reference ID 16-053-20140306

² Paragraph 2.3, Appellant's costs response

development plan policies, including policy DM24, are made in this context to facilitate the delivery of housing to address unmet need.

7. Accordingly, when it was submitted, the appeal did advance a case referring to national planning policy, with the appellant seeking to test the Council's overall judgement in that regard.
8. The information subsequently shows that on 28 April 2023 the Council considered it was able to demonstrate a sufficient supply of housing land, and they duly informed the appellant of this. However, the appellant explains that they were also aware that the Council's position on this point was due to be tested at a separate appeal for major residential development under reference APP/X1118/W/23/3318751. It was not until September 2023 that that appeal decision ultimately confirmed the Council's position.
9. The question then becomes was it unreasonable of the appellant, having submitted the appeal under different circumstances, not to have subsequently withdrawn it. To my mind, it was reasonable of the appellant to await the outcome of the appeal in Fremington to establish the position on housing supply and delivery.
10. Neither does the PPG suggest that the failure to withdraw an appeal if circumstances subsequently change would be inherently unreasonable. Moreover, by the time the Fremington appeal decision was issued, the Council would have prepared its case in relation to the appeal scheme.
11. In reaching my decision, I have had regard to the costs decision³ provided by the applicant, but given the differences in the nature of the respective proposals, I do not consider that the circumstances are directly comparable.
12. On balance, I am not persuaded that these are circumstances that fall within those described as unreasonable behaviour in the PPG.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. As such, an award of costs is not warranted.

Helen O'Connor

INSPECTOR

³ Reference APP/W1145/W/22/3312735