



Costs Decision

Site visit made on 30 January 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2024

Costs application in relation to Appeal Ref: APP/K1128/W/22/3313614 Northlands Chittleburn Close, Brixton, PLYMOUTH, PL8 2FL

- 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 D Bothma for a full award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission described as 'Retrospective planning permission for use of existing accommodation above the garage as a holiday let'.
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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.
3. The applicant's case for a full award of costs is that the Council in refusing the planning application did not determine the application in a consistent manner, made vague and inaccurate assertions about the proposal's impact and unreasonably withheld planning permission for development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. With regards to the first point, the applicant refers to an earlier planning permission which was granted by the Council¹ for the use of the annexe at Northlands as holiday accommodation. The Officer Report in that instance concluded that the site was close, and well related, to the facilities and services in Brixton, that public transport links were reasonably available and that it would involve the reuse of an existing building.
5. The Council say that in relation to the current appeal development, the case officer was entitled to exercise their planning judgement, and that there was evidence from the Parish Council that the bus service was unreliable. However, I am not persuaded that the circumstances relating to appeal development were materially different to the earlier proposal for the use of the annexe as holiday accommodation. For example, both schemes involved the use of an existing building within the grounds of the same property, accessed via the same driveway and fell to be determined under the same development plan policies.

¹ LPA Ref: 1778/22/FUL

6. The Council's submissions do not sufficiently demonstrate the material differences or changes which may have occurred between the granting of planning permission for the annexe and the consideration of the appeal scheme. A Sustainable Travel Plan could have been secured by condition.
7. The applicants could have reasonably expected that the Council would have taken a consistent approach in this regard. For these reasons, I agree that the Council have been inconsistent in the way it has applied its own policies in relation to the appeal site. In these circumstances, the Council acted unreasonably in respect of reason for refusal 1.
8. With regards to the remaining reasons for refusal, the Council's submissions set out why they found the proposal to be unacceptable in terms of its size, use, location in the plot, the effect of other holiday accommodation on the occupiers of the appeal development and its impact on the occupiers of neighbouring properties. I accept that letters of objection from interested parties can give an indication of the effects of a development on their living conditions. However, the lack of such letters is not necessarily determinative. For example, neighbours may not be aware of the planning process or may not wish to upset relations.
9. Whilst I have not found in the Council's favour in these respects, I am satisfied that the Council has sufficiently explained its concerns and for this reason I do not find that they made vague or inaccurate assertions.
10. I have found that Policy Emp4 of the Neighbourhood Plan was not relevant to the proposal and the Council have confirmed that they gave very little weight to letters from local businesses which they were entitled to do, given that the weight to be attributed to a particular consideration is a matter for the decision maker's discretion. I therefore find that the Council have not acted unreasonably in respect of reasons for refusal 2 and 3.
11. For these reasons, notwithstanding my findings on the first reason for refusal and the outcome of the appeal, the Council did not prevent development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
12. Whilst an appeal could not have been avoided, extra costs would have been incurred by the applicant in countering the Council's first reason for refusal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and an award of costs in this respect is justified.

Costs Order

13. 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 Mr D Bothma, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in pursuing reason for refusal 1 only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is 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.

Alison Fish

INSPECTOR