
Costs Decision

Site visit made on 9 April 2024

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Costs application in relation to Appeal Ref: APP/Q1153/W/23/3326764 Hayes, Holebrook Lane, Exbourne, Devon EX20 3SJ

- 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 G Macklin for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for Application for the renewal of previously granted consent for 1no. dwelling (previously 1 of 2).
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Decision

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

Reasons

2. 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 considers that the Council acted unreasonably by preventing or delaying development which should clearly have been permitted given a previous consent on the site and being led to believe that the proposal was acceptable; failure to produce evidence to substantiate each reason for refusal using vague, generalised or inaccurate assertions unsupported by any objective analysis; and, by refusing permission on a planning ground related to biodiversity that was capable of being dealt with by condition.
4. In response, the Council state that the applicant has failed to show unreasonable conduct. This is on the basis that it exercised its duty to determine the application in a reasonable manner and refused a planning application for a proposal not in accordance with the development plan policies, having regard to material considerations and providing evidence. The Council further state that it is not uncommon, and certainly not unreasonable, for an alternative decision to be taken on reflection with colleagues following an original inclination to support the application.
5. In response to this, the applicant reiterates that the Council failed to provide any reasonable evidence of genuine conflict with development plan policies and failed to justify the reasons for refusal. The applicant further reiterates the changing position of the Council during the course of the planning application, clarify that this costs claim does not relate to work on the planning application itself and raise concerns regarding the arguments in the Council's rebuttal.

6. From the evidence before me, the effect of the proposal on the local area was of great concern to a number of interested parties including the Parish Council and local residents.
7. Although the Council approved permission at the same premises a number of years ago, they were entitled to refuse a subsequent planning application. The two applications were subject to different planning policies, material considerations and must be determined on their merits. The approval of a previous permission on the site does not mean that planning permission some years later should automatically be granted.
8. I acknowledge that the applicant was advised by officers that the development was acceptable, but these were informal opinions only, and were not binding upon the Council. While the change of position following requests for information is no doubt disappointing and frustrating for the applicant, it is not unreasonable for the council to request clarification on matters or to change its position following further consideration of the proposal. Furthermore, I have found in my main decision that the Council were justified in raising concerns regarding harm to the Conservation Area and housing mix.
9. Matters relating to each of the four reasons for refusal were detailed in the Council's officer report and statement of case and referenced against relevant development plan policies. Although I have found in the applicant's favour in my main decision in relation to the provision of a modern design of dwelling on the site and biodiversity, it was not unreasonable for the Council to reach a different view on these matters. As such I do not find that the Council failed to produce evidence to support their decision to an extent that the applicant incurred unnecessary expense in pursuing the appeal. The appeal provided an opportunity for the applicant to test the position and explain his case. In my view the Council provided reasons for its concerns which justified its position.
10. The Council have been clear in relation to biodiversity that they do not believe that this could be adequately assessed and mitigated through imposition of a condition. As a result, it is not unreasonable that they have not suggested a condition in relation to this matter.
11. The applicant may disagree with the Council's assessment, decision making process, decision and arguments in its costs rebuttal. However, this does not mean that the Council acted unreasonably in refusing planning permission.
12. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
13. The application for an award of costs is dismissed.

C Rose

INSPECTOR