



Costs Decision

Site visit made on 8 May 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Costs application in relation to Appeal Ref: APP/X1165/W/23/3323479 Site at Waterside Quarry, Paignton, TQ4 6LJ

- 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 Adam Billings for a full award of costs against Torbay Council.
 - The appeal was against the refusal of the Council to grant approval of reserved matters pursuant to outline planning permission Ref P/2019/0520, granted on 15 July 2020.
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Decision

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

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. A full award of costs is sought by the applicant on the basis that the Council acted unreasonably and caused the applicant unnecessary or wasted expense in the appeal process on account of incorrectly describing the development, failure to substantiate concerns regarding design, raising objections that relate to issues that should already have been considered at the outline stage, and lack of communication throughout the planning process.
4. The officer's report refers to an 'underbuild' which it contends refers to the need for level changes. There is nothing before me to suggest that the Council misunderstood the proposal or that its assessment was not based on the merits of the scheme. While the appellant contends that amended drawings were commissioned to rebut the claim, and to avoid any misinterpretation, the Council's use of the word itself does not amount to unreasonable behaviour, nor has it been demonstrated that it resulted in any wasted expense in the appeal process.
5. It is my understanding that the Council's concerns relate not to the contemporary appearance of the dwellings but the 2 storey design and the resulting scale and massing of the dwellings. Moreover, the Council has provided sufficient commentary to explain its position and substantiate its case in that regard. Consequently, while I have reached a different conclusion, I am satisfied that the Council's submissions show that it was able to substantiate its reason for refusal in relation to design and has therefore not acted unreasonably.

6. The PPG¹ lists examples of unreasonable behaviour, which includes refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage. The outline application² was made with all matters reserved. As such, the plans submitted were for illustrative purposes in respect of matters of scale and appearance, that were not part of the formal proposal, and therefore not approved at the outline stage. The Council was not under any obligation to provide commentary on aspects of the proposal not for consideration at that stage. I therefore cannot conclude that the Council's behaviour, in objecting to the proposal on these grounds at the reserved matters stage was unreasonable.
7. The applicant has also expressed concern regarding the lack of communication with the Council during the application process. It is alleged that had the Council been willing to discuss the proposal its concerns could have been addressed through the submission of amended plans, which has been demonstrated through the Council's support for a subsequent application for a revised scheme, and the appeal could have been avoided.
8. The Council advised the appellant that minor changes to the scheme would not be sufficient to address its concerns and that the application would be determined based on the submitted plans. The PPG³ advises that while it is possible for an applicant to suggest changes to an application before the local planning authority has determined the proposal, it is at the discretion of the local planning authority whether to accept such changes.
9. Furthermore, given that the design of the scheme was only one matter in dispute this would not have avoided the appeal, or the expenses incurred as a result.
10. The applicant contends that the decision of the Council to refuse the scheme was at odds with earlier discussions with officers. However, any informal advice given before an application is made is done so without prejudice and cannot pre-determine the outcome of a subsequent application. Moreover, in the absence of a formal record of the communication, there is nothing before me to conclude that the advice given was so misleading as to amount to unreasonable behaviour on the part of the Council.

Conclusion

11. Given my findings above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. Accordingly, an award of costs is not justified.

E Worley

INSPECTOR

¹ Paragraph: 049 Reference ID: 16-049-20140306

² LPA Ref P/2023/0084

³ Paragraph: 061 Reference ID: 14-061-20140306