



Costs Decision

Site visit made on 2 July 2024

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Costs application in relation to Appeal Ref: APP/X1165/W/23/3323427 Land to the north of Totnes Road, Collaton St Mary, Paignton TQ4 7PY

- 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 Taylor Wimpey (Exeter) for a full award of costs against Torbay Council.
 - The appeal was against the refusal of the Council to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions imposed on the approval of reserved matters or details pursuant to a previous planning permission.
 - The reserved matters application followed an outline application for up to 73 dwellings (including market and affordable housing).
-

Decision

1. The application 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. The applicant has made several claims against the Council in the costs application. It is suggested that the Council's conduct at the reserved matters and section 73 stage has led to an unnecessary appeal. Evidence submitted suggests that the applicant made several unsuccessful attempts to engage with the Council to discuss planning conditions either before the reserved matters application was submitted or during its consideration of the section 73 application.
4. Whilst the PPG establishes that costs cannot be claimed for the period during the determination of the planning application, it does say that parties are expected to behave reasonably throughout the planning process and behaviours and actions at the time of the planning application can be taken into account in a costs decision. However, although I have allowed the appeal, most of the disputed conditions remain in some form as I found them to be necessary. I cannot therefore agree that the difficulty that the applicant had engaging with the Council regarding the conditions made the appeal necessary or that it could have been avoided if the Council had behaved differently; and there is nothing to demonstrate that the Council behaved unreasonably during the appeal process.
5. The applicant further submits that the approach to materials was irrational and that the evidence submitted to support the Council's position did not relate to

the approved scheme or an assessment of the materials proposed. This is primarily a matter of planning judgement. I found the materials proposed to be acceptable, however at my visit I saw natural slate and red stone associated with the small group of historic buildings that include the Church, and I therefore consider it reasonable that the Council took issue with the proposed materials. Furthermore, the reference to Policy PNP1c of the Paignton Neighbourhood Plan to 2030 appears entirely reasonable as it refers to local identity and the colour of local materials.

6. Details of the Council's recent decision at an adjacent site known as Redlands are before me. Here the Council concluded that there is a mixture of materials used nearby and no uniform design or appearance within the immediate streetscene. Although an adjacent site, this was for a much smaller scheme where consideration of the character and materials prevalent in Totnes Road was the primary matter, whereas the appeal concerns a much larger scheme that relates to a wider area, including the cluster of historic buildings that include the Church. Therefore, I do not consider the two differing approaches to be irrational.
7. The Council referred to previous comments from Historic England and its own conservation specialists. Although these comments appear to relate to a previous iteration of the scheme, they are both relevant in terms of understanding the context of the site, local character, and design constraints. Further comments from either were not sought, however I do not consider it unreasonable for a planning officer to make a judgement on the suitability of materials without specialist input.
8. A further part of the applicant's costs claim relates to the permitted development rights condition. The applicant submits that the Council's withdrawal of permitted development rights was irrational and not evidenced. I note the requirement in the National Planning Policy Framework for such conditions to only be used when there is clear justification for doing so. However, although I imposed a less restrictive condition in my decision, the Council had acted reasonably by giving reasons for imposing a condition to restrict permitted development rights, that included the steep slope across the site and retaining the level of agreed landscaping.
9. The applicant also submits that the Council acted irrationally with regard to technical highways details. I do accept that the Council has not substantiated its claim that further technical details are required. It should be straightforward to spell these out, given that this matter has been raised several times. In this respect I consider the Council to have behaved unreasonably. However, I still imposed these conditions to secure phasing of the highways work to serve completed dwellings, ongoing public access and maintenance, and to allow an alternative means for securing details of the roads if they are not adopted as public highway.
10. The applicant also submits that the Council has provided no evidence to explain why the Advance Payment Code (APC) should not apply. Whilst the informative attached to the Council's decision indicates that the Highway Authority would pursue an APC, I cannot be sure that it would do, as the informative cannot be enforced and can do no more than indicate the intention of the Highway Authority. The conditions give the necessary assurance.

11. In summary, for an award of costs to be made I need to be satisfied that unreasonable behaviour has resulted in unnecessary or wasted expense. In this case, I found that the Council acted unreasonably by failing to substantiate what additional technical details would be required to satisfy the highways conditions. However, I considered it necessary to retain the disputed conditions in my decision and the conditions did not prevent the applicant from commencing work on site as the S.38 route was followed. Therefore, no unnecessary or wasted expense has been incurred and an award of costs is not warranted.

A Tucker

INSPECTOR