



Costs Decision

Site visit made on 22 July 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

**Costs application in relation to Appeal Ref: APP/U1105/W/24/3337198
Land adjacent to The Gardens, Blackhorse Lane, Blackhorse, Devon
EX5 2FT**

- 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 Mrs H Mitchell for a partial award of costs against East Devon District Council.
 - The appeal was against the refusal of an application for planning permission for construction of 5 dwellings with associated access, parking and landscaping.
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Decision

1. The application for an award of partial 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. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. An example of this is refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
4. The applicant considers the Council behaved unreasonably and focuses on the point that if mitigation is required to address the impacts of aircraft noise, this can only be provided for internal areas. They add that several relevant planning decisions secured such mitigation by the submission of information to discharge appropriately worded conditions. I am however not familiar with the site-specific circumstances of those cases.
5. I agree with the applicant that it would be possible to secure some internal noise mitigation using a condition. However, without any information on the level of mitigation that may or may not be required, sound proofing may result in disproportionate restrictions on the living conditions of future occupants.
6. As such, I have concluded in the main decision that a noise report is necessary to establish actual noise levels at the appeal site. Additionally, this could inform the design and layout of the scheme, including the level of mitigation required for the provision of external amenity space and quiet areas.
7. In that context, although a request for such a report was not made by the Council, the Environmental Protection Officer commented on the application on

the 15th of June 2023. Here, they recommended a noise assessment was undertaken to meet the good design range and add that consideration would be needed on ways to try and improve external amenity areas. Given the Council did not determine the application until the 18th of September 2023, the applicant would have had sufficient knowledge and time to address this issue.

8. For the reasons given, the appeal could not have been avoided and conditions would not have enabled the development to proceed. Consequently, I find no unreasonable behaviour or wasted expense in the appeal process.

J Hills

INSPECTOR