



Costs Decision

Site visit made on 2 July 2024

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2024

**Costs application in relation to Appeal Ref: APP/W1145/W/23/3333137
Higher Town Farm, Road from Woolsery Primary School to Duerdon Cross,
Woolsery, Devon EX39 5QS**

- 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 M Fletcher for a full award of costs against Torridge District Council.
 - The appeal was against the refusal of planning permission for retention of existing dwelling.
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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. The Council's first reason for refusal referred to paragraph 80 of the previous National Planning Policy Framework (the Framework) since renumbered as paragraph 84 in the new Framework. It was also referred to in the Delegated Report which concluded that the development did not meet the criteria in that paragraph. The Council withdrew reference to this paragraph in its Appeal Statement only after receipt of the applicant's case. The PPG states that the withdrawal of a reason for refusal may constitute unreasonable behaviour. Whilst the Council did not withdraw the reason for refusal in its entirety, it nevertheless changed its position after the appeal had been lodged and the applicant had submitted evidence in response to the point. This amounts to unreasonable behaviour on procedural grounds.
4. The Council's pre-application advice was provided at a time when it did not have a 5-year housing land supply and was provided on that basis. In such circumstances paragraph 11(d) of the Framework applies and sets out the approach to be followed. The Council's advice followed that approach. After the advice was issued, the Council established a 5 year supply which resulted in it revisiting the planning balance. The pre-application advice noted that circumstances might change after it had been issued. The Council therefore did not act unreasonably in reaching a different conclusion when considering the planning application.
5. Whilst it was open to the applicant to suggest that the site was well related to the settlement and effectively formed part of it, the Council did not incorrectly apply the development boundary. The North Devon & Torridge Local Plan 2018

(NDTLP) identifies the boundary and it was included in appendix 2 to the Council's Appeal Statement. The site falls outside it. Although the Council's evidence may not have identified suitable sites for residential development within the NDTLP settlement boundary, it was not necessary for it to do so. It did not act unreasonably in this regard.

6. The appeal relates to a single dwelling with unrestricted occupancy. Whilst the need for rented accommodation was an appropriate matter to raise, the Council did not act unreasonably in considering the development as open market housing. Letters of support were noted in the Council's Delegated report submitted with the appeal evidence. It was for the Council to determine how much weight to give to those representations and it did not act unreasonably in its consideration of them.
7. The Council's Delegated Report and Appeal Statement show that it had taken account of the current level of agricultural activity on the site. This was also reflected in the Environmental Protection Officer's comments on the scheme. The Council's statement pointed out that it would be unable to control the intensity of the use in the future. I am satisfied therefore that it took account of the applicant's submissions on this and did not act unreasonably.
8. The Council's statement however did assume that occupants of the dwelling would not have access to the village via the private pedestrian track. On the basis of the applicant's evidence this was incorrect as it states that he has a legal right of access over this private track. Whilst the PPG indicates that inaccurate assertions which are unsupported by any objective analysis might amount to unreasonable behaviour, the Council does not necessarily hold information on private rights of way. On this basis, I do not consider it amounts to unreasonable behaviour.
9. For the reasons given above, I have concluded that the Council has acted unreasonably but only to the limited extent of its late withdrawal of part of its first reason for refusal. I turn therefore to the matter of unnecessary or wasted expense. The applicant's evidence for the appeal was straightforward and included a short rebuttal of the Council's case regarding Framework paragraph 84. It appears to me that this was, in reality, only a small part of the applicant's response to that reason for refusal and of his overall case. The applicant has not clearly demonstrated as required by the PPG how the unreasonable behaviour has resulted in unnecessary or wasted expense. As this was only a small part of the overall case, I am not convinced that the change in the Council's position has caused the applicant wasted expenditure.

Conclusion

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

R Kent

INSPECTOR