



Costs Decision

Site visit made on 7 August 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2024

**Costs application in relation to Appeal Ref: APP/Q1153/W/24/3340578
The Old Rectory, Road from Keepers Cottage to St James Church,
Jacobstowe, Devon EX20 3RQ**

- 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 John Milverton for a full award of costs against West Devon Borough Council.
 - The appeal was against the refusal of planning permission for Conversion and extension of store to use as annex or holiday let (part retrospective).
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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. The applicant considers that the Council acted unreasonably by not taking account of relevant facts; misinterpreting and misapplying local policy; not taking full account of relevant appeal decisions and caselaw; carrying out a prejudiced assessment; and refusing to discuss with the applicant and misapplying its planning charter.
3. With regards to the various aspects that are alleged to have been overlooked, most of the issues related to each were actually covered to various extents in the Council's appeal submissions; and several of those come down to being a matter of interpretation and fact and degree. The one aspect not referenced by the Council – relating to the store drawing services from the main house – was not a significant or determinative matter. Whilst the applicant may also have wished the Council to give more weight to certain matters, it is for the decision maker to decide what weight to give to the material considerations in each case. In addition, the Council is not obliged to, for example, agree with the applicant's assessment that the local highway network is well made and lightly trafficked, or that the store shares amenity space with the main house and does not, in effect, have a separate access.
4. I have not concurred with the Council on all the policies it alleged were relevant to the proposed development. Nevertheless, the available evidence does not indicate that the Council erred in any significant or unreasonable way in relation to its interpretation and subsequent application of the identified policies. The applicant's position on the relevance of some of the policies is also

only an interpretation, which I have also not fully accepted as applicable based on the circumstances of the appeal site and the development proposed.

5. Whilst the Council's reference to the aims of one planning policy was not wholly accurate, it is clear that the Officer Report is summarising and interpreting the policy rather than directly quoting from it; and the summary was not so inaccurate to either fundamentally flaw the Council's conclusions or equate to unreasonable behaviour. As the adopted development plan does not identify Jacobstowe as a 'sustainable village', the Council's reference to table 3.2 of the local plan was, based on the available evidence, also not erroneous. Furthermore, whilst the applicant may consider that travel planning is not applicable to the appeal proposal, my appeal findings indicate otherwise. In any event, although the costs application includes significant detail on this matter, the applicant's appeal submissions give it relatively limited attention.
6. Several appeal decisions were put to me by both the applicant and the Council to support their positions on the proposed development (as well as in relation to the costs application). However, whilst I noted the decisions and considered their applicability to the appeal proposal, the particular circumstances of those cases were of limited relevance to the proposed development, which I determined on its merits. The available evidence also indicates that the Council did not act unreasonably in relation to this matter, and the acceptability of certain details for a different development on a different site does not mean that similar details should inevitably be found acceptable for other schemes.
7. The case of Uttlesford was covered in the applicant's appeal submissions and the Council's appeal statement subsequently referred to it. Although the Council only made a passing reference to it, I agree with the applicant that the thrust of that case is essentially covered by the various points/questions contained in the annex section of the Council's Supplementary Planning Document (SPD). The Council's Officer Report went through each of those points. Having considered the relevant local policy, the available evidence and the SPD's questions and guidance, I found that the proposed annex use would, as a matter of fact and degree, also be unacceptable; and that a planning condition would neither be appropriate nor reasonable in the circumstances.
8. Consequently, whilst the Council's appeal statement could have engaged with the caselaw more (and the annex issue in general), and I disagree that considering the proposed annex use would have been academic given the other use proposed, not doing so was not unreasonable. Whilst the applicant may be disappointed that the Council did not accept their answers to the questions and may disagree with some of the Council's considerations of the questions and findings, the Council was also within its rights to complete its own assessment.
9. Although the applicant takes exception to the Council's assertion about carbon emissions in rural areas, it seems to me that such a statement is not particularly controversial and was not unreasonable. The assertion was also clearly made as a general point and was not determinative.
10. In accordance with legislation, the Decision Notice includes a statement setting out how it seeks to work proactively and positively with applicants, as the PPG and National Planning Policy Framework encourage. I note that the applicant considers this statement is not being put into practice and is a sham, and that discussing proposals only via the pre-application service is not positive or proactive. However, the Council did correspond to some extent with the

applicant before the decision notice was issued, and the available evidence does not indicate that the appeal could have been avoided had the main parties further discussed the proposal during the Council's determination of it. I also have little before me which indicates that pre-application discussions could not have been undertaken had they been requested. Whilst the Council's Planning Charter may not set out (or justify) that all discussions will be refused during determination of planning applications, it does not indicate that such discussions will take place. It is also clear that the Council will determine proposals based on the submitted plans and details, with only minor revisions accepted. The Council's approach to determining the planning application was therefore neither unreasonable nor contrary to its charter.

11. It has been put to me that the Council made various errors in its determination of the planning application. Whilst its Officer Report and appeal statement do contain some errors and omissions, these are generally minor in nature and are not determinative to the outcome of the appeal; and, both alone and combined, none are so significant so as to equate to unreasonable behaviour.
12. The Council's response to the costs application contains various omissions and incorrect assertions, along with inconsistencies/contradictions with its appeal submissions (such as claiming that the applicant's appeal submissions did not provide detail on, for example, an appeal decision and Uttlesford). However, these relate to the costs application rather than the Council's behaviour in the appeal process. The errors in the Council's costs response also neither change nor influence its position on the proposed development, as set out in the Officer Report and appeal statement. Furthermore, those documents show that the Council did have regard to considerations such as the 'Apple Loft appeal' and the applicant's sustainable travel plan (contained within the Design and Access Statement addendum). The issues with the Council's costs response are therefore not relevant to the behaviour of the Council with the appeal process.
13. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

T Gethin

INSPECTOR