



Costs Decision

Site visit made on 3 September 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Costs application in relation to Appeal Ref: APP/X1118/W/23/3330485

Land at High Tide, North Morte Road, Morteheo EX34 7EG

- 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 Ms Catherine Cull Thomas for a full award of costs against North Devon District Council.
- The appeal was against the refusal of planning permission for the erection of a new dwelling and associated works.

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 applicant has asserted that the appeal was unnecessary due to the disparity between the advice given verbally, in the pre-application enquiry response¹, on the decision notice and within the Application Report relevant to this appeal. Notwithstanding the limited evidence before me regarding the proposal submitted as part of the pre-application enquiry, the Council's response highlights the sensitive location of the site whilst specifically stating that the acceptability of a dwelling on the site is dependent upon its height being no higher than a single storey. As the appeal scheme comprises a 1.5-storey dwelling with a higher ridgeline than the pre-application scheme, therefore, it is reasonable for the Council to come to a different conclusion.
4. I appreciate that the National Planning Policy Framework (the Framework) advocates the use of the pre-application enquiry service and that a positive response would lead the applicant to have a level of expectation or degree of comfort when submitting a subsequent planning application. Even if no new concerns were raised by interested or statutory parties during the determination of the planning application, nonetheless any advice provided by the Council in a pre-application stage is done so without prejudice. The Council, therefore, is not duty-bound to it as a result.
5. Regardless, the assessment of a proposed development on the character and appearance of an area will require the decision maker to use their judgment when determining its effect. As demonstrated in my appeal decision, I have reached a different conclusion to the Council concerning the effect of the proposed development on the North Devon Natural Landscape (the NDNL).

¹ Ref: ENQ/0778/2022, dated 3 November 2022

However, I have found the effect of the appeal scheme on the character and appearance of the area would be harmful which, in itself, leads me to dismiss the appeal.

6. The Application Report is sufficiently detailed for me to conclude that an assessment of the proposed development has been undertaken appropriately and I see no reason to conclude that non-resident applicants were treated differently from locals. As such, the evidence before me does not demonstrate that the Council acted in an unprofessional manner although I note that the applicant's agent has made a verbal complaint to a Council manager.
7. The typographical error on the decision notice is unfortunate and I can see that it would result in misleading the applicant regarding the policies the Council consider determinative in their decision. However, as highlighted in my appeal decision, the relevant Local Plan policy² was referenced in the Application Report in several sections, in particular under the *Design and AONB* heading. In addition, as the Council's statement of case acknowledges the error, the applicant had the opportunity to respond to Policy DM08A of the Local Plan within their final comments submission. Irrespective of this, the decision notice indicates that the appeal would be contrary to other policies, which would have, in isolation, led to the refusal of the planning application.
8. Reference has been made to updated plans the applicant submitted to the Council during the determination of the planning application but was overlooked. Whilst this may be the case, the updated plans do not form part of the evidence before me, nor have I been provided with a copy of the email³ sent to the Council with the amended plans attached. Nevertheless, the Council is under no obligation to accept the amended plans, depending upon the scale of the changes and when they were submitted relative to the consultation period. The Council, therefore, did not act unreasonably in determining the planning application based on the originally submitted plans.
9. I conclude that the appeal could not have been avoided and that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred. Therefore, an award of costs is not warranted.

Juliet Rogers

INSPECTOR

² Policy DM08A of the North Devon and Torridge Local Plan 2011-2031 (the Local Plan)

³ Sent to the Planning Officer on 12 July 2023