



Costs Decision

Site visit made on 6 November 2024

by Neil Pope BA (HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Costs application in relation to Appeal Ref: APP/X1165/W/23/3333967 Singleton Gardens , Meadfoot Sea Road, Torquay, Devon, TQ1 2LQ.

- 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 Ray Bishop of O J Developments Ltd for a full award of costs against Torbay Council (the LPA).
 - The appeal was against the refusal of planning permission for the erection of 7 apartments, 2 attached dwellings and extensions/refurbishments to an existing dwelling, plus associated landscaping and access works.
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Decision

1. The application is approved in the terms set out in the Order below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. Local planning authorities are at risk of an award of costs where they fail to produce evidence to substantiate each reason for refusal on appeal or where they provide vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Whilst authorities are not bound to accept the advice of their officers, evidence should be submitted to justify taking a contrary stance.
4. The independent assessment of the financial viability of the proposed development that was undertaken by the LPA's consultant initially concluded that a £100,000 off site affordable housing contribution could be sought. After reviewing the further information provided by the applicant, the LPA's consultant advised that the level of contribution should be reduced to "approx. £65,000". This was supported by the LPA's officers in making their recommendations to the planning committee.
5. In taking a contrary stance to its appointed consultant and officers, no evidence, such as any further interrogation of the financial details to demonstrate that a higher contribution would be justified, was submitted by the LPA. During the appeal, the LPA failed to provide any cogent evidence to substantiate its concern that a contribution of £65,000 towards off-site affordable housing would be inadequate. In so doing, it acted unreasonably.
6. In giving little weight to the appellant's viability assessment and also seemingly the independent assessment undertaken on its behalf, the LPA appears to have rigidly applied the 15% affordable housing target contained within policy H2. No evidence was submitted to show that a contribution greater than "approx.

£65,000" could be justified or obtained without rendering the development unviable. The LPA did not produce any further financial assessment to indicate that the findings of its consultant were incorrect and should not be relied upon.

7. I note the LPA's argument that it was not for the planning committee to say what might have been acceptable. However, having, in effect, determined that "approx. £65,000" would be inadequate, it was then incumbent upon the LPA to demonstrate that a higher contribution could be justified. The applicant's offer of a £65,000 contribution is not evidence of the ability of the development to generate a surplus profit or to seek an affordable housing contribution in excess of this sum. In seemingly relying upon the percentage target within policy H2, the LPA acted unreasonably. This caused the applicant to incur unnecessary costs in refuting the first reason for refusal.
8. No planning obligation was submitted with the application. This is not uncommon and such matters are often negotiated during the course of the planning application process. (The supporting text to policy H2 refers to negotiation.) On the basis of the review undertaken by the LPA's consultant, the absence of an obligation with an affordable housing contribution of "approx. £65,000" would render the proposal in conflict with policy H2.
9. However, the applicant's offer of a contribution of £65,000 is noted within the LPA's first reason for refusal. The LPA was also aware, before it determined the application, that the appellant was willing to enter into a section 106 Agreement to secure this level of contribution. It was unreasonable therefore for the LPA to rely on conflict with policy H2, especially as this policy refers to an independent assessment of viability and which, in this instance, had found that a contribution of "approx. £65,000" would be justified.
10. In respect of the LPA's second reason for refusal, the planning officer's report to committee included a detailed assessment of the proposed siting, scale, massing and design. Design is a subjective matter and it is not unusual for members of planning committees to reach a different view to their officers when considering such matters.
11. In this instance, there was evidence before me to substantiate the LPA's concerns regarding the siting of the proposed development on the appeal site. As a consequence, a full award of costs would not be justified. However, other than describing the proposal, no evidence of any substance was presented by the LPA to demonstrate how the scale, massing or design of the proposed buildings would be harmful and warrant the withholding of planning permission.
12. In refusing the application, it is not evident that the LPA undertook any objective analysis or other meaningful assessment of the scale, massing and design so as to justify taking a different stance to its officers and to counter the detailed explanation of these matters which had been provided as part of applicant's Design and Access Statement. It was unreasonable for the LPA to act in this manner and not substantiate its concerns during the appeal. The LPA's behaviour in respect of these matters caused the applicant to incur unnecessary costs in refuting them at appeal.
13. I have found above that the LPA acted unreasonably in respect of its first reason for refusal and elements of its second reason for refusal and this behaviour caused the applicant to incur unnecessary costs. I therefore conclude that a partial award of costs would be justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Torbay Council shall pay to Mr Ray Bishop of OJ Developments Ltd the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred by the applicant in responding to the LPA's reason for refusal numbered 1 and elements of reason for refusal numbered 2. In particular, those costs associated in addressing the LPA's concerns relating to an inadequacy of the off-site affordable housing contribution and to the scale, massing and design of the proposed development.
15. The applicant is now invited to submit to Torbay Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Neil Pope

Inspector