



Costs Decision

Site visit made on 9 December 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Costs application in relation to Appeal Ref: APP/X1165/D/24/3353165 Fosseway West, St Agnes Lane, Torbay, Torquay, TQ2 6QD

- 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 & Mrs Fitzgerald for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for demolition of uPVC porch and replacement with one storey extension with terrace.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 Appellant's application includes the costs form and copies of the appeal form, decision notices, reports and email exchanges. The form states that a full award of costs is being sought but provides no further commentary or grounds for seeking those costs. I have assumed that the application raises procedural and substantive points. The PPG states that local planning authorities (LPA) will be at risk of an award being made against them if they fail to behave in a reasonable manner in relation to the procedural matters of the appeal or fail to produce evidence to substantiate each reason for refusal.
4. There is no suggestion that there have been any procedural issues other than the Appellants contention that the LPA failed to engage and consult with them at the application stage. The LPA's rebuttal includes evidence of various pre-application discussions held with the Appellant and also previous applications to extend the appeal site, including an approval for a two storey extension. The PPG states that whilst costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded. Even so, there is no evidence before me to suggest that the LPA's behaviour at the application was unreasonable or led to unnecessary or wasted expense.
5. In relation to the substantive point, in the absence of any grounds I have assumed that the Appellant's allegation is that the LPA prevented development which should have been permitted.

6. Whilst I have found the appeal proposal to be acceptable in relation to its impact on the character and appearance of the area and that it would not harm designated and non-designated heritage assets, those findings were based on the evidence presented, the policies of the development plan and the National Planning Policy Framework, the Conservation Area Character Appraisal and my own observations on site.
7. The LPA's evidence comprised its reasons for refusal, Delegated Report and relevant policy documents. These provided, in my view, a precise explanation of the LPA's objections to the appeal scheme. The evidence submitted was consistent with the guidance on Householder Appeals set out in the Procedural Guide – Planning Appeals – England (December 2022). Paragraphs C.7.2 – 7.3 to Annex C of this Procedural Guide state that a LPA's case should comprise its reasons for refusal, report and documents that accompany its Questionnaire. I am satisfied, therefore, that the information submitted by the LPA enabled me to fully understand their objections to the appeal proposal.
8. In relation to the character and appearance of the area, and the impact of the development on designated and non-designated heritage assets, these assessments are essentially subjective and matters of judgement, on which opinions will differ. It is also for the decision-maker to decide what weight should be accorded specific factors and considerations as well as the significance of designated and non-designated heritage assets and the impact of the proposal on them. The latter as part of the statutory duty which requires special attention be paid to the desirability of preserving or enhancing the character or appearance of those heritage assets.
9. I cannot agree, therefore, that the LPA has acted unreasonably in this case.
10. For the above reasons, I find that the Appellant was not put to unnecessary or wasted expense in the appeal.

Conclusion

11. I find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

G Roberts

INSPECTOR