
Costs Decision

Site visit made on 23 January 2025

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Costs application in relation to Appeal Ref: APP/X1165/W/24/3346552 Pia's, 33 Fleet Street, Torquay TQ2 5DJ

- 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 Graeme Cresswell and Mr Paul Wilson for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for change of use of retail's upper floors storage to 4 No. residential units.
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Decision

1. The application for costs is dismissed.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The application for costs relates principally to two aspects, namely, the Council's failure to fully explain and substantiate their Reason for Refusal One (RfR1), and their alleged unreasonable behaviour in not accepting further submissions from the appellant.
5. RfR1 of the Council's decision notice refers principally to the proposal being contrary to the requirement of Policy H1 of the Torbay Local Plan. In the preceding paragraph, RfR1 refers to a number of key policies of the TLP but fails to identify which policies these are. In their response, the Council considers that the Officer's Report sets out the details of these policies.
6. It is the role of the decision notice to clearly and precisely set out the main areas of concern and, when refusing planning permission, for the Council to identify which policies of the development plan a proposal would be contrary to. From my reading of RfR1, I find that it fails to do either and is imprecise and vague.
7. That said, in their appeal statement, the Council have sought to explain and justify what harm they considered the proposal to have caused and as a

consequence, which policies were considered to be breached. They have also provided evidence and further explanation to justify their opinion.

8. Therefore, whilst I find RfR1 to be lacking in detail and would have benefited from more careful drafting, I do not find this to be so poor as to represent unacceptable behaviour on the part of the Council.
9. In relation to the second ground, the Council have responded with further details of their guidelines to applicant's in relation to changes to minor planning applications, along with an explanation of their view that the extension of time agreed with the appellant represented a period by which they would have expected to have conducted any necessary re-consultation and re-consideration. In their view, the agreed date did not therefore represent the date by which new details should be received by. I also note the Council suggestion to the appellant of the potential need to withdraw and re-submit with the additional information.
10. I can understand the sense of frustration felt by the appellant due to the decision of the Council not to accept their additional submissions. However, that said, there is no evidence to suggest that, if these revisions had been accepted, it would have resulted in a situation where the Council's concerns were fully addressed, and the outcome of the appeal application changed. Furthermore, I agree with the approach of the Council that an extension of time is for the deadline for the determination of an application, and they are entitled to make a decision on or by this date, and that they do not have to accept new information if it would prejudice their ability to achieve this.
11. Therefore, on the basis of the information before me, it would not be reasonable to conclude that the Council behaved unreasonably in the procedure leading up to the appeal or in the determination of the appeal application. Therefore, whilst the Council could have engaged better with the appellant, I do not find that it has put the appellant to unnecessary or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Adrian Hunter

INSPECTOR