



Costs Decision

Site visit made on 10 April 2025

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2025

Costs application in relation to Appeal Ref: APP/X1165/W/24/3354095 448 Babbacombe Road, Torbay, Torquay TQ1 1HW

- 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 Taylor for a full award of costs against Torbay Council.
 - The appeal was against the refusal of the Council to grant planning permission for "Proposed building to form 3 letting apartments within the gardens/grounds of existing site (revised scheme)" without complying with a condition attached to planning permission Ref P/2009/0271/PA dated 8 September 2009.
 - The condition in dispute is No 3 which states that: "The units hereby approved shall be occupied for holiday use only and shall not be occupied as a person's sole or main place of residential occupation. The owners/operators shall maintain a register of the names of all occupiers of the units and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority."
 - The reason given for the condition is: "To ensure that the holiday accommodation is not used for unauthorised residential occupation, in accordance with Policy TU5 of the saved Adopted Torbay Local Plan 1995-2011".
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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 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 Council's evidence is set out in its Planning Officer Report and its response to the appellant's statement of case. These show that when it granted planning permission for the apartment building in 2009¹, the Council gave weight to the fact that the development would provide additional holiday accommodation. The pre-application advice issued by the Council in 2015 subsequently suggested that, if the planning application had been for residential accommodation, it would not have been granted consent.
4. Against this background, whilst my decision on the appeal reached a different conclusion to the Council on the effect of the proposal on the significance of the Conservation Area, the Grade II listed building and the character of the wider area, it was reasonable for the Council to consider the difference between holiday

¹ LPA planning application reference P/2009/0271/PA

accommodation occupied for only a week or two at a time and unrestricted permanent dwellings.

5. The Council's evidence sets out the relevant parts of the National Planning Policy Framework (the Framework) and the relevant development plan policies in some detail and assessed the proposal against them. It also explains the conclusions the Council had reached against those policies which led to the reasons for refusal. Whilst the Council's evidence was not detailed and focussed more on the effect of the approved apartment building rather than the effect of the change in the nature of its use, it was not so vague or generalised as to be unreasonable.
6. Although I have concluded that the requirements of policy TO2 of the Torbay Local Plan would not extend to the removal of the apartment building in its entirety, the covered sitting out area between the two buildings is an example of the cosmetic features which the policy seeks to address. The policy was relevant to the proposal and the evidence provides sufficient detail to show that the Council was not unreasonable in considering the proposal against it.
7. Although the physical relationship between the buildings already exists, the Council did not act unreasonably in considering the effect of the proximity of the apartments to No 448 Babbacombe Road on the future occupants of the proposed unrestricted dwellings. Its evidence provides a specific assessment of the effect on the living conditions of future occupants.
8. The planning application did not provide sufficient information to enable the use of No 448 and thereby its parking requirement to be established. Even though the 'General Arrangement' plan demonstrates parking for seven cars, the relevant development plan policies require that appropriate provision is made for car parking. The Council's evidence provides a clear explanation to justify the sixth reason for refusal and it has not acted unreasonably in assessing whether the layout of the car park, the necessary manoeuvring space and the number of spaces would be sufficient if the condition were to be removed.
9. The Planning Officer Report and the first reason for refusal demonstrate that the Council carried out a planning balance as required by the Framework and concluded that the harm caused by the proposal would significantly outweigh the benefits. The balance is a matter of planning judgement and I have not found any compelling evidence that the Council has acted unreasonably in the way it carried out that balance.
10. Turning to procedural matters, the Council has a policy setting out the circumstances when amendments to current non-major planning applications are sought. Whilst I am not aware of the status of the policy and whether it was the subject of public consultation, it does make clear that the Council will only enter into negotiation on applications on an exceptional basis. The evidence indicates that the case officer discussed the proposals with the appellant's agent to explain why the proposals would be refused. Even though there may have been no further contact with the appellant after the appeal was submitted, I am not convinced from the evidence before me that there has been unreasonable behaviour by the Council on procedural grounds.

Conclusion

11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

R Kent

INSPECTOR