



## Costs Decision

Site visit made on 23 February 2022

by **Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 March 2022

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### **Costs application in relation to Appeal Ref: APP/W1145/W/21/3279537 Goats Hill House, Goats Hill Road, Northam, Bideford EX39 1AJ**

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs M Jarvis for a full award of costs against Torridge District Council.
- The appeal was against the for refusal of planning permission for proposed replacement dwelling, to include the demolition of the existing dwelling (affecting a public right of way) without complying with a condition attached to planning permission Ref 1/0639/2020/FUL, dated 5 November 2020.

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### **Decision**

1. The application is refused.

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicants consider that the Council has behaved unreasonably as it did not have due regard to the extant permission at the site and wrongly dismissed the Landscape and Visual Impact Assessment (LVIA) which accompanies the proposal. The Council has not adequately substantiated its position and has wrongly assessed the scheme against the previous dwelling at the site.
4. The Council did acknowledge the existence of the permitted scheme but took the view that it was not relevant to the application of Policy DM26, which, given it relates to replacement dwellings, must be assessed against the original dwelling that has now been demolished. I agree with this approach.
5. The officer report refers to a perceived consistency in scale across the housing in the area along Goats Hill Road and concludes that the proposal would divert from that. It also considers that the 'eye drawing' increase in scale, combined with the prominence of the site, would be intrusive. Whilst I have not agreed with the Council on these points, they demonstrate site specific reasoning, so it cannot be held that the Council failed to reasonably substantiate its decision.
6. Given the inherently subjective and site-specific nature of the issue of character and appearance, the appeal decision I have been shown, which also relates to a separate local planning authority, is of limited relevance<sup>1</sup>. Furthermore, the applicants' have made several criticisms of the Council's case, but these amount to a rehearsal of arguments as to the planning merits of the

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<sup>1</sup> Appeal Ref APP/X1118/W/21/3266917

scheme, more appropriately addressed to the appeal itself. This includes the issue of the relative stock that the Council placed on the conclusions of the applicants' LVIA, and the reasons given by the Council for doing so.

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

*Matthew Jones*  
INSPECTOR



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### **Decision**

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2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Council asserts that the appellants acted unreasonably as there are a number of factual inaccuracies in their statement of case and because the appellants' costs application is speculative. The Council also criticises the way the appellants reacted to previous discussions regarding the appeal site.
4. I found that varying the condition would accord with the development plan. In doing so, I agreed that, given the wording of Policy DM26, and within the context of an appeal to vary a condition, the policy should be interpreted against the original dwelling. However, I do not find the alternative argument that the scheme be assessed against the extant permission to be manifestly unreasonable. It is, after all, an extant permission in its own right.
5. With regard to any perceived difference between 'landscape impact' and matters of character and appearance, the Council swiftly addressed this issue in less than a page of its appeal statement, logically without substantive cost.
6. The Council has also referred to costs incurred in response to the appellants' costs application itself. However, these costs are not relevant as they relate to the costs regime, which is distinct from the entirely separate appeal process.
7. The Council considers that previous discussion which took place between the main parties was ignored. However, the appellants cannot be found to have acted unreasonably by submitting a planning application or undertaking their right to make an appeal. Also, that the applicants previously reverted to a

smaller scheme to gain planning permission does not convey any form of acceptance that the larger scheme was in conflict with the development plan.

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

*Matthew Jones*  
INSPECTOR