

Costs Decision

Hearing held on 24 August 2016

Site visit made on 24 August 2016

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 September 2016

Costs application in relation to Appeal Ref: APP/D0840/X/16/3144238 Tregenna, St Minver, Wadebridge, Cornwall, PL27 6RH.

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Philip Henry Polkinghorne for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the refusal of the Council to issue a certificate of lawful use or development for the existing use of the dwelling in breach of an agricultural occupancy condition.
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Decision

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

Reasons

2. The application and the response by the Council were made in writing. Briefly, the appellant submits that the Council's decision was poorly founded and unduly influenced by a late representation on the application by the local Parish Council, a representation that the appellant was not properly given the opportunity to respond to. It is argued also that the Council's preference for a hearing caused additional expense which could have been avoided had the appeal followed the written representations procedure.
 3. I have considered the application in the light of the advice contained in the Government's Planning Practice Guidance (PPG) on such matters. This advises that irrespective of the outcome of the appeal costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily in the appeal process.
 4. 6. It is evident from the Appeal Decision that I have not accepted the Council's interpretation of the scope of the definition of agriculture in the 1990 Act, and this has led to success for the appellant on the appeal and the grant of the LDC. Nevertheless this turned on the matter of interpretation of the legislation and it was not in my view a situation where the Council clearly acted rashly or contrary to well-established case law. The Council provided a reasonable explanation of why they came to the view that the appellant was employed in agriculture as a professional horticulturalist. Whilst I have not agreed with the Council I consider it was sufficient to discharge the requirement to explain their case and the legal basis on which it was founded.
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5. Regarding the events leading up to the Council's decision, this relates to a submission by the Parish Council that its view was that the appellant did in fact accord with the agricultural condition. This submission came on 10 December 2015, following the Parish Council meeting on 8 December, and was then published on its website. The appellant believes that it was this representation that caused the Council to take the same view, but I have no good reason to doubt the evidence of the Council officer dealing with the case, Ms Copplestone, that she came to the view that the appellant was working in agriculture solely on the basis of the evidence provided by him. In the same vein, I accept her evidence that a line in her planning report that suggests that prior to the Parish Council representation she was of a different view was, in effect, a typo.
6. Regarding the purported failure to allow the appellant to comment on the Parish Council's submission, the representation was published in good time and the appellant's agent did in fact speak on the phone to Ms Copplestone regarding the representations before the decision was finalised. A requested written submission went astray, seemingly due to a misunderstanding, but on the evidence before me I cannot apportion blame. Ms Copplestone was clearly aware of the appellant's position regarding the Parish Council's submission before the decision was made, and I have no reason to doubt that she had regard to it. I do not consider the Council's conduct in this respect to amount to unreasonable behaviour.
7. Finally, in respect of the Council's preference for a hearing, I am satisfied that this was reasonable in the circumstances, having regard to the Planning Inspectorate's guidance, to which the Council has drawn my attention.
8. For these reasons I am not satisfied that unreasonable behaviour on the part of the Council, leading to the appellant incurring unnecessary or wasted expense, has been demonstrated, and the application does not succeed.

Paul Dignan

INSPECTOR