
Costs Decision

Site visit made on 14 November 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 9th December 2016

Costs application in relation to Appeal Ref: APP/D0840/Z/16/3157647 Whirlwind Sports, Harmsworth House, Lemon Quay, Truro TR1 2LW

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Cornwall Council for a full award of costs against Schroder Real Estate Investment Management.
 - The appeal was against the refusal of planning permission for development described on the application form as 'alterations to shop frontage'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out that 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.¹
3. The Council's claim for an award of costs relates to both substantive and procedural matters. Substantively the Council is of the view that the appellant pursued the appeal without strong grounds to contest the reasons for refusal.² Procedurally the Council contends that additional information submitted at appeal resulted in their unnecessarily incurring costs.³
4. The first main issue in the appeal to which this costs decision relates was whether or the development proposed would preserve or enhance the character or appearance of the Truro Conservation Area. The appeal followed unsuccessful planning appeal Ref APP/P0810/A/05/1178404 which was also for alterations to the ground floor frontage of Harmsworth House (the '2005 appeal').
5. The development proposed via the 2005 appeal engaged similar planning considerations as the development proposed via the appeal to which this costs decision relates. At the time application Ref PA16/03705 was made to the Council, the development plan for the area was the same as in 2005.

¹ Reference ID: 16-030-20140306.

² With reference to Guidance Reference ID: 16-001-20140306 and 16-053-20140306.

³ With reference to Guidance Reference ID: 16-052-20140306.

6. However the National Planning Policy Framework (the 'Framework') was published in March 2012, and since 2005 various development relevant to the context of Harmsworth House has been proposed and undertaken. It cannot therefore be said that in pursuing the appeal the appellant acted unreasonably given that the planning considerations relevant to the proposal materially changed since the 2005 appeal.
7. The appellant submitted two documents at appeal in support of the proposal that were not before the Council in reaching a decision.⁴ Whilst the submission of additional evidence at appeal is not encouraged, I am satisfied that in this instance these documents expand upon points made at application stage relating to the effect of the proposal on the surrounding area and regarding the benefits thereof to the commercial use of the property.
8. Whilst the appeal was initially to be determined via the Minor Commercial Appeals process, which does not normally allow the Council to make significant submissions at appeal, it is reasonable for the appellant to have expanded upon the points that were made in favour of the proposal at application stage. Consequently any expense incurred by the Council in their consideration of the two documents submitted at appeal was necessary in the interests of procedural fairness, and indeed not significantly different to that which would have been incurred in other appeal procedures.
9. As set out in the appeal decision I found that the weight that could be accorded to benefits of the proposal on the basis of the evidence put forward by the appellant was highly limited, chiefly given the lack of specificity within such evidence to Harmsworth House or in respect of quantifying the benefits of the development proposed. However these shortcomings in my view are principally related to the detail provided within the evidence rather than its inherent relevance to the proposal. Consequently the evidence put forward by the appellant in my view cannot be said to be demonstrably inadequate, but rather insufficient to outweigh the harm that would arise from the proposal.
10. For the above reasons, and taking account of all other matters raised, I conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. With reference to the approach in the Guidance, an award of costs is therefore not justified in this instance.

Thomas Bristow

INSPECTOR

⁴ A Heritage Statement prepared by Armour Heritage, report Ref. AH412/1, dated August 2016 and a report prepared by CBRE and SBC property, dated 23 August 2016.