The Planning Inspectorate

# Costs Decision

Inquiry held on 8 November 2016
Site visit made on 7 November 2016

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 6 January 2017**

**Costs application in relation to Appeal Ref: APP/D0840/C/16/3144887**
**Govail, Higher Drift, Buryas Bridge, Penzance, TR19 6AE**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 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 Ms Li Yu.
- The appeal was against an enforcement notice alleging without planning permission, the sub-division of the dwellinghouse resulting in a material change of use of the property to form 2 separate units of residential accommodation, and operational development.

## Decision

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

## Preliminary matters

2. The National Planning Practice Guidance (2014) (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. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process, or substantive, which relates to the planning merits of the appeal.

## Reasons

3. The Council's application relates to both procedural and substantive matters.

4. With regard to procedural matters I acknowledge that a statement of common ground was not completed, that the appellant's proof of evidence and confirmation of witness attendance was submitted late, and that additional documentary evidence was submitted during the course of the Inquiry itself. The appellant's agent was unable to provide satisfactory reasons to me as to why the late evidence could not have been provided earlier in the appeal process. The Council state that such behaviour did not assist it in the preparation of its case or facilitated the efficient running of the appeal process.

5. I agree that the appellant's behaviour, as outlined above, was unreasonable behaviour in terms of the PPG, and I have some sympathy with the Council in that it would have made preparation of its case more difficult. However, the behaviour did not result in the Inquiry having to be adjourned for any

substantial length of time, or cause it to run into a second sitting day. As such, there is no convincing evidence before me that the unreasonable behaviour resulted in any significant unnecessary or wasted expense by the Council in preparing and presenting its case, or in terms of its evidence and witness attendance.

6. With regard to substantive matters the Council argues that poor and inadequate hearsay evidence was initially relied upon through the appellant's agent, rather than being directly from the appellant herself. Also, that the evidence as a whole was imprecise and not of a sufficient standard to meet the relevant test that on the balance of probability the use as two separate dwellinghouses was immune from enforcement action. In summary, the Council's arguments point to the appeal as having had little prospect of success.

7. Having regard to these matters I would say first, for the avoidance of doubt, that hearsay evidence is of course permissible in planning Inquiries. I also agree that the evidence as a whole in support of the appeal was in some areas both imprecise and ambiguous; a conclusion I reached in my decision on the appeal. However, I do not consider that the appeal was without any merit whatsoever, or that the evidence was so limited in substance that a reasonable case could not be argued. Consequently, notwithstanding that I have dismissed the appeal, I do not consider that the appeal was unreasonably made on its merits.

8. For these reasons I conclude that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated.

*Thomas Shields*

INSPECTOR