
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 Ms Li Yu for a full award of costs against Cornwall Council.
 - 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.
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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 Councils 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 appellant's application relates to procedural matters.
 4. It is argued that the appeal could have been avoided if the Council had either determined the planning application that was already before them at the time the enforcement notice was issued, or, alternatively, if the Council had invited a new application so that the planning merits could be considered.
 5. However, the Council stated its reasons for issuing the notice at Section 4 of the notice. Those reasons explained why the development was unacceptable to the Council and they related to and specifically referenced the Council's Development Plan policies. As such, those reasons would have been equally relevant to any application for planning permission the Council had to determine. The Council is entitled to issue an enforcement notice having regard to the Development Plan and hence it was not unreasonable for the Council to issue the notice in these circumstances. The appellant could have appealed the
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notice under ground (a), that planning permission should be granted, but did not do so.

6. The appellant also argues that the Council did not properly investigate the use of the property before issuing the notice. However, for the legal grounds of appeal, including ground (d), the onus of providing evidence to support the appeal is upon the appellant, not the Council. In this regard I have set out in the appeal decision that on the balance of all the evidence before me the appeal should fail.
7. 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
