
Costs Decision

Site visit made on 17 January 2017

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 06 February 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3160375 The Red House, Downterry, Torpoint, PL11 3JA

- The application is made under the Town and Country Planning Act 1990, 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 Mr Stuart Fitz-Barton.
 - The appeal was against the refusal of planning permission for new dwelling and double garage.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The Government's Planning Practice Guidance (PPG) at Paragraph 030 (Reference ID: 16-030-20140306) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 053 (Reference ID: 16-053-20140306) identifies the types of behaviour that may give rise to a substantive award against an appellant. This includes pursuing an appeal that has no reasonable prospect of succeeding and includes the example (not exhaustive) where the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. The Council are of the view that the appellant has behaved unreasonably on this basis.
3. The Council has referred me to an overwhelmingly similar proposal to this appeal scheme only four dwellings away at the property known as Swn-Y-Don, which was refused at appeal¹ on 30 December 2015. This included a dwelling of remarkably similar appearance and in a very similar elevated position, with notably comparable relationships with its neighbouring properties. The appellant in their response to the costs application has not sought to contest the similarities of the two schemes, but instead relies heavily on the approval of another development in the area at Down Cliff at appeal² and more recently an alternative scheme permitted by the Council on the same site³.

¹ APP/D0840/W/15/3014901.

² APP/D0840/A/13/2202504, dated 21 January 2014.

³ PA16/05482.

4. I am mindful that the appeal scheme at Down Cliff was granted permission in January 2014, before the Swn-Y-Don appeal was refused in December 2015. Indeed, the Inspector of the Swn-Y-Don appeal refers to the Down Cliff appeal and explains the differences between the two, concluding that there were notable differences between the two schemes in terms of their relationships with the existing pattern of development in the area and the distances to their neighbours. In my view nothing has materially changed since the Swn-Y-Don appeal, other than the Council permitting a revised scheme on the Down Cliff site following the principle of a dwelling on the site already having been established by the appeal decision.
5. The appellant has referred to the Swn-Y-Don appeal in their evidence and was therefore clearly aware of it and it appears from the drawings that have been provided to me that the two schemes had the same architect. I consider that it would have been clear to the appellant that the Swn-Y-Don Inspector's concerns in terms of the effect of the proposal on the character and appearance of the area and on the living conditions of the occupants of neighbouring properties would have been equally applicable to the appeal site, given their very close proximity and notably similar characteristics. Indeed in the case of this appeal, the appeal site is even more isolated and further away from any other development of similar height above sea level, than the Swn-Y-Don appeal site, which was a key concern of that Inspector.
6. I am of the view that because the proposals have such striking similarities and are located only 4 properties apart with both sites having noticeably similar characteristics in terms of their local context that the appellant has behaved unreasonably by pursuing an appeal. This is because the appeal had no reasonable prospect of succeeding, given the findings of the Swn-Y-Don Inspector, who had regard to the earlier appeal decision at Down Cliff and explicitly explained the differences, which I consider are equally applicable to this scheme. In my view, this would have been clear to the appellant. In addition, I am not of the view that there have been any material changes, both within the appeal site or within its local context, since the Swn-Y-Don appeal decision was issued.
7. For the reasons set out above, I conclude that the proposal had no reasonable prospect of succeeding and the appellant has acted unreasonably, as set out in Paragraph 053 of the PPG. Therefore, a full award of costs is allowed.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stuart Fitz-Barton shall pay Cornwall Council, full costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Stuart Fitz-Barton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

Jonathan Manning

INSPECTOR