
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: 21st March 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3156962 Elm Tree Cottage, Ricketts Road, Polgooth PL26 7DA

- 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 Mr & Mrs Yeo for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for a new detached 2 storey dwelling without complying with a condition attached to planning permission Ref PA12/02794, dated 16 May 2012.
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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 appellants' case for an award of costs is in respect of both substantive and procedural matters. Substantively the appellants contend that the Council did not robustly justify their reasons for seeking to enforce condition 3 of planning application Ref PA12/0794 (the '2012 permission'), the matter in dispute in the appeal, by failing to take account of changing policy circumstances and a successful appeal on land adjacent to the appeal site (the '2016 permission').² Procedurally the appellants aver that the Council sought to ensure compliance expeditiously with condition 3 before a decision was arrived at in respect of the 2016 permission, which affects the surrounding context of the appeal site.
4. The Council's decision notice cites that the development effectively proposed via application Ref PA16/03798, which I explain within the appeal decision would be to grant permission for a new dwelling,³ would conflict with policy 76 of the Restormel Borough Local Plan 2001-2011 adopted originally in 2001 (the 'former plan') which was at the time that the Council's decision was taken part of the development plan for the area. However reference is also therein made to conflict with the National Planning Policy Framework (the 'Framework'), which is furthermore referenced within the associated officer's report.

¹ Reference ID: 16-030-20140306.

² Ref APP/D0840/W/15/3140180.

³ By virtue of the removal of condition 3 of planning permission Ref PA12/0794 which, briefly stated, required the demolition of a dwelling within the appeal site.

5. Detailed consideration is given within the Council's appeal statement to both the provisions of the former plan and requirements of the Framework in respect of the development that would result. Moreover various policies within the then emerging Cornwall Local Plan: Strategic Policies 2010-2030 (the 'Local Plan') are also considered within the Council's appeal statement. It cannot in my view be said that the Council failed to take account of the changing policy context relevant to application Ref PA16/03798 and the subsequent appeal.
6. Reference is not apparently made, however, within the Council's officer report or within their appeal statement to the 2016 permission, and I accept that considering the effect of this proposal in relation to the appeal site would have added clarity to the Council's position. However, as set out in the appeal decision, the 2016 permission related to different policies than are engaged in relation to application Ref PA16/03798, and the 2016 permission represents only part of the surrounding context of the appeal site.
7. In my view the Council did not therefore fail to take account of the changing policy context relevant to the development proposed. Although the 2016 permission was not addressed by the Council, this was not in my view unreasonable, or resulted in their reaching a different position in respect of the merits of the development proposed via application Ref PA16/03798, given the different circumstances in which that permission secured consent and the wider context of the appeal site. Whether the proposal was appropriate in respect of its location was inherently a matter of planning judgement, and in my view the Council based their judgement in this regard on reasonable evidence.
8. In relation to the procedural matter raised by the appellants, the appeal to which this costs decision relates was not against enforcement action but rather an appeal against refusal to grant permission under Section 73A of the Town and Country Planning Act 1990 as amended. Moreover there is no robust evidence before me that the appellants have incurred costs directly related to the Council's pursuing enforcement action here.
9. Given that the Council took enforcement action in respect of permission Ref PA12/0794 and refused permission for application Ref PA16/03798, the appellants would have been left in no doubt that the Council were not supportive of the development proposed based on its merits. Indeed I have found above that their position in respect of the merits of the development effectively proposed was not as a consequence of unreasonable behaviour. Consequently the Council's actions in respect of seeking to enforce condition 3 cannot be said to have directly resulted in costs to the appellants.
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