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## Costs Decision

Site visit made on 4 April 2017

**by CD Cresswell BSc (Hons) MA MBA MRTPI**

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

**Decision date: 15 May 2017**

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### **Costs application in relation to Appeal Ref: APP/D0840/W/16/3159908 Malahat, New Road, Cadgwith, Ruan Minor TR12 7JZ**

- 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 Mr & Mrs Wild for a full award of costs against Cornwall Council.
  - The appeal was against the refusal of planning permission for the demolition of existing domestic garage and erection of a single storey dwelling.
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### **Decision**

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

### **Reasons**

2. The National Planning Practice Guidance (PPG) 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. In this case, the appellant's main point is that the Council failed to substantiate its reasons for refusal.
  3. The appellant points out that neither the Council's Conservation Officer nor Heritage England raised any objections to the proposal. However, the Conservation Officer does not appear to have been consulted and the response from Heritage England simply indicates that the application should be determined in accordance with standard policy guidance. Therefore, the lack of a specific objection from these parties cannot be taken as a sign that the Council should have necessarily approved the application.
  4. It is argued that the Council made vague and generalised assertions about the impact of the proposal on the Conservation Area and failed to take into account the 'bespoke exemplar design' of the proposed dwelling. However, pages 12 and 13 of the Officer Report describe the existing nature of the site and the appearance of the proposed dwelling in some detail. It is made clear that it is the erosion of space which is considered to harm the Conservation Area as the site provides a green gap which adds to the character of the settlement. Consequently, I do not consider the Council's assertions to be particularly vague or generalised in this respect. While the report describes the design of the proposed dwelling as 'disjointed and contrived' this is a matter of planning judgement which the Council are entitled to make. An explanation is given as to why this was considered to be the case, even if the appellant does not agree. The Council's stance was therefore reasonable.
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5. The appellant argues that the Council failed to produce any evidence with regard to the impact of the development on trees. To a large extent, the Officer's Report draws on the comments of the Council's Tree Officer who makes explicit reference to the appellant's tree survey. It is argued that the retained trees would be unacceptably close to the proposed dwelling, thereby putting them under continued pressure for pruning or felling. This is a matter of professional judgement and the Council's Tree Officer is entitled to express his view of the appellant's own expert advice. The Council's Tree Officer also points out that the replacement trees which were planted following unlawful felling activity are not clearly shown on the Tree Survey and argues that their ultimate spread and height was not taken into account. It is therefore clear enough why the Council considered the dwelling to conflict with the trees on the site, even in light of the appellant's tree survey.
6. The Council determined the application before the Cornwall Local Plan was formally adopted. The reasons for refusal cite conflict with Policy 13 of a draft version of the Local Plan dated January 2016. However, when the Local Plan was adopted Policy 13 had been renumbered as Policy 12. This is clearly pointed out in the Council's Appeal Statement and cannot be described as unreasonable behaviour given that the plan was undergoing examination when the application was submitted (as explained in the Officer Report). Although the reasons for refusal refer to Policy PD8 of the Cornwall AONB Management Plan 2011-2016, the Council's Statement makes it clear that Policy MD9 of the more recently adopted AONB Management Plan 2016-2021 is very similar. There is very little before me to suggest that this genuinely lead to wasted time or unnecessary expense as the appellant suggests.
7. The appellant also argues that the Council were not consistent in refusing the application as a dwelling in the garden of Pen Y Craig was approved in 2014 which has a greater visual impact than the proposed dwelling. However, the Officer Report asserts on page 11 that the site was considered preferable for a new dwelling as it did not impact protected trees. Justification is therefore given, even if the appellant takes a different view on this matter.
8. I therefore conclude that the reasons for refusal have been substantiated. Unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

*CD Cresswell*

INSPECTOR