
Costs Decision

Site visit made on 3 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 26th May 2017

Costs application in relation to Appeal Ref: APP/D0840/W/17/3166421 79 Mongleath Road, Falmouth TR11 4PN

- 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 and Mrs Stuthridge.
 - The appeal was against the refusal of planning permission *"to provide vehicular access and a hardstanding for 3 vehicles on our property"*.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) section 'Appeals' advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. An award of costs is mainly sought on substantive grounds. Summarised, the Council's case is that the proposal was clearly contrary to the Development Plan and national policy and the appellants did not advance any evidence to suggest otherwise. Moreover, a previous appeal concerning a vehicular access at the appeal property involving the same appellant was dismissed in March 2008¹. There have been no material changes in circumstances in the intervening period which could have led to a different outcome in this appeal. Consequently, the Council regards this appeal as having been unreasonably made, resulting in the wasted costs of defending the appeal. In commenting on the Transport Advisory Note (TAN), the Council have also referred to its submission as involving extra expense for preparatory work that would not otherwise have arisen.
4. The appellants say that the appeal was not unreasonable. They point out that the previous appeal was nine years ago, the current appeal scheme has been amended to increase visibility, there have been physical changes to the road as the speed humps have been replaced with a speed table and a 'Keep Clear' parking restriction introduced. Planning policies have also changed in the intervening period.

¹ Ref: APP/P0810/A/07/2057151.

5. Paragraph 053 of the PPG sets out when an appellant might be at risk of an award of costs on substantive grounds. It includes a (non-exhaustive) list of examples of where the appeal has no reasonable prospect of success. This includes when the development is clearly not in accordance with the Development Plan, and no other material considerations such as national policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence. The list also includes 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 proposal was unacceptable and circumstances have not materially changed in the intervening period. At paragraph 052, the PPG explains that a procedural award may be warranted in the circumstances described in the final sentence of paragraph 3.
6. Although objective recommendations for visibility from vehicular accesses are set out in the Manual For Streets (MfS), the failure to meet those standards does not automatically equate to unacceptable harm to highway safety. Other factors including road geometry, vehicle speeds, traffic levels and predicted driver behaviour may also play a part in determining the acceptability of a proposal in highway safety terms. Consequently, the assessment of the highway safety impact of a proposal involves elements of judgement. Therefore, it is perfectly possible for the appellants to hold an opposing view to the Council. Provided the appellant's view is supported by relevant evidence it should not be regarded as being unreasonable.
7. The appellants set out a detailed argument in the TAN why they considered that the level of visibility available to the east of the proposed access would not cause harm to highway safety, based on the existing road conditions. Reference was also made to relevant appeal decisions where their preferred approach had been supported. The appellant's case was therefore supported by clear, relevant evidence. As a result, I am not convinced that it was clear that the proposed access was not in accordance with the Development Plan.
8. Whilst the road geometry remains similar, in the period since the previous appeal there have been changes to the road layout, described above. I understand that the proposed access arrangements have been amended compared with the previous appeal scheme. Moreover, national and local planning policies have changed in the meantime, following publication of the National Planning Policy Framework in March 2012 and adoption of the Cornwall Local Plan in November 2016. Also, the Manual For Streets 2 was published in 2010, providing further advice on the application of the recommendations in the MfS. Reviewing the proposed access against the above matters and the previous appeal decision, it was not certain that the latest appeal would be unsuccessful. Accordingly, there were reasonable grounds for the appellant considering that there had been a material change in circumstances since the previous appeal.
9. In terms of procedural matters, whilst the Council had to undertake further work on the appeal in respect of the TAN, it is likely that this would have been similar to the work undertaken to determine the revised planning application which I understand has been submitted. Consequently, if I had regarded the appellant's behaviour in submitting the TAN as being unreasonable, it is unlikely that the Council would have incurred any unnecessary or wasted expense in preparing its response.

10. In order to avoid unnecessary appeals, it is important that appellants behave responsibly and exercise their right of appeal only where there are strong grounds for doing so. I did not share the appellants' conclusions on the merits of the appeal. Nevertheless, it is not clear to me that this appeal had no reasonable prospect of success. Nor is it apparent that the appellants' conduct in the appeal procedures has resulted in the Council incurring wasted expense. Consequently, the conditions for an award of costs at paragraph 030 of the PPG have not been met.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Stephen Hawkins

INSPECTOR