
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/16/3158470 Sea Craig, 4 Carrick Way, St Mawes, Truro TR2 5BB

- 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 Ray Leclercq for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for construction of a replacement dwelling house with separate garage and residential amenity space.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 sought on substantive grounds. Summarised, the award is sought on the basis that the Council prevented development that should have been permitted, it failed to produce accurate and consistent evidence to support its reason for refusing permission, it made vague and generalised assertions about the impact of the proposed dwelling and it acted contrary to recent appeal decisions.
 4. In response, the Council say in summary that its statement of case sets out the characteristics of the site and surroundings and it details the specific reasons why the dwelling would be harmful to the pattern of local development. Therefore, it has shown clearly why the development cannot be permitted. The Council now has an adopted Cornwall Local Plan (CLP) and a 5-year supply of housing land. Consequently, and also having regard to the location of the site within the Area of Outstanding Natural Beauty, the presumption in favour of sustainable development does not apply in this appeal. The appeals referred to by the appellant were decided in materially different circumstances. The made Roseland Neighbourhood Development Plan (NP) is in general accord with the CLP and there is a statutory duty to have regard to such plans. The Council have also made reference to a recently dismissed appeal and associated costs
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decision¹. They say this has similarities in terms of the assessment of the character of the area and the detailed design and materials of the dwelling to the appeal scheme and therefore supports their approach.

5. Paragraph 049 of the PPG clearly advises Councils that they will be at risk of costs being awarded against them on substantive grounds where amongst other matters, they prevent or delay development which should clearly have been permitted, they fail to produce evidence to substantiate their reasons for refusal or they make vague, generalised or inaccurate assertions about the impact of a proposal, which are unsupported by any objective analysis.
6. Council officers concluded that the appeal scheme was acceptable and recommended approval of the planning application. The Council is not bound by the advice of its officers. However, it does have to produce evidence to substantiate the reason for refusal. In this case, the Council's reason focuses on the effect of the proposed dwelling on the character and appearance of the area. I accept that assessing and reaching conclusions on such matters involves making judgements. It would therefore not be unreasonable for the Council to hold contrary views to the applicant, provided those views were underpinned by a proportionate body of relevant evidence. Given the factors identified by the Council, I acknowledge that the presumption in favour of sustainable development in paragraph 14 of the National Planning Policy Framework (the Framework) does not apply.
7. The Council produced a detailed statement of case. Nevertheless, there is little in the statement by the way of a thorough, objective analysis of the characteristics of the appeal site and the pattern of local development in the surrounding area. Reference is made to the increased scale and massing and visual dominance of the dwelling compared with the existing bungalow as well as criticising other aspects of the scheme, including external materials and glazing to the elevations, as well as the prominence of the proposed garage. However, it is not clear how these factors would in themselves equate to visual harm, in particular where the character and appearance of the area has not been clearly defined. There is little detailed analysis of the effects of the dwelling, either in terms of the street scene or the wider setting in the village to indicate that there was a good understanding as to how it would actually be perceived in its surroundings.
8. The Council also refer at length in its statement to policies and guidance in the CLP, NP, the Framework, the adopted Cornwall Design Guide and other documents. In some instances these references are comprised simply of a recital of the allegedly relevant text, without giving even a brief explanation as to why it considered that the dwelling would not accord with those policies or it would be inconsistent with the guidance referred to.
9. For the above reasons, I find that the Council's assessment of the dwelling in terms of the harm it would cause to the character and appearance of the surrounding area and a consequent failure to accord with relevant Development Plan policies, national policy and other guidance, largely amounts to a series of generalised assertions which for the most part are not properly underpinned by detailed evidence. Therefore, the Council's reason for refusing permission does not withstand objective scrutiny and it lacks substance.

¹ Ref: APP/D0840/W/16/3158468.

10. I acknowledge that each case is determined on its individual planning merits and in the light of the circumstances applying at that time. The appeal decisions referred to by the applicant were therefore largely of limited relevance in terms of considering the merits of the appeal scheme, although one of them partly reflected my own findings in relation to NP Policy HO8. Similarly, although some of the circumstances might be comparable, the recent appeal decision referred to by the Council is also of limited relevance to the current scheme. In particular, I do not read that appeal decision as affording substantial weight to NP Policy HO8.
11. In the light of the foregoing matters I am led towards the conclusion that having regard to the Development Plan, national policy and other material considerations, the dwelling should clearly have been permitted. As a result, the refusal of planning permission constitutes unreasonable behaviour as defined in paragraph 049 of the PPG and the applicant has been put to the unnecessary expense of making an appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Cornwall Council shall pay to Mr Ray Leclercq, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR