
Costs Decision

Site visit made on 15 May 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 15 June 2017

Costs application in relation to Appeal Ref: APP/D0840/W/17/3167951 11 Cotsland Road, Truro TR1 1YR

- 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 S Clarke for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for development described in the application form as 'one detached dwelling on the land adjacent to 11 Cotsland Road, Truro.'
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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 I accept, however, the appellant's point that actions at application stage may be relevant to costs applications at appeal,² and have addressed these matters as relevant.
3. The appellant's case for a full award of costs relates primarily to the Council's procedural handling of the application, specifically that the absence of suitable engagement with the Council's forestry officer made it necessary to make an appeal. The appellant further contends, in part as a consequence, that the Council failed to suitably and specifically justify their opposition to the development proposed.³
4. The main issue in the associated appeal was the effect of the development proposed on two sycamore trees within the appeal site protected by Tree Preservation Order (and, by consequence, to the character and appearance of the area). On the basis of the evidence before me at appeal I found that the development proposed would result in moderate harm to the character and appearance of the area, and that there were no compelling reasons before me to justify this harm. As such my overall position in respect of the development proposed was consistent with that of the Council.

¹ Guidance Reference ID: 16-030-20140306.

² Guidance Reference ID: 16-03-20140306.

³ In particular noting that the Council's reasons for refusal given in respect of application Ref PA16/00426 were essentially the same as a previously unsuccessful application, Ref PA15/10058, where the appellant had prepared new evidence in support of the latter proposal.

5. I understand the appellant's frustration arising from what he considers to be a lack of engagement with the Council's forestry officer in the context of pre-application advice, Ref PA16/00552/PREAPP, which followed unsuccessful planning application Ref PA15/10058. However, as noted in the appeal decision, there is extensive planning history to the appeal site including relating to proposed works to trees. Therefore at application stage there would have already been substantial evidence before the Council related to trees within the appeal site.
6. Moreover I note that the Council explain that their tree officer visited the appeal site in order to provide comments on application Ref PA16/04426 (being the application to which the appeal relates).⁴ Indeed it appears from the information before me that both planning application Ref PA15/10058 and PA16/04426 were for a dwelling within the appeal site, the substantive difference between the two being largely, although not exclusively, in respect of the supporting evidence prepared by the appellant. Having reviewed this evidence, as explained in the appeal decision, I was not of the view that it was sufficient to justify the harm arising from the development proposed.
7. I would furthermore note that the encouragement given in paragraph 187 of the National Planning Policy Framework (the 'Framework') that local planning authorities should look for solutions rather than problems does not indicate that all development proposed is, or could through engagement be rendered, appropriate.
8. Moreover the appellant has explained in his costs application that he would have sought to make an appeal in relation to planning application Ref PA15/10058 had he known at that juncture that engagement with the Council and the further evidence produced would not have resulted in a mutually acceptable approach to development. This indicates that an appeal would have been made in any event, and as such qualifies the strength of the appellant's argument for an award of costs.
9. Whilst I accept that the Council's reasons for refusal are somewhat generally stated, the officer report associated with application Ref PA16/00426 explains how the Council gave reasoned consideration to the evidence before them at that stage in reaching a decision. Indeed the Council's appeal statement considers in detail the various points made within the appellant's arboricultural studies undertaken both in support of and after the original application related to the effect of the proposal on trees.
10. For the above reasons, whilst I understand the appellant's reasons for applying for an award of costs, I am not of the view that unreasonable behaviour resulting in unnecessary expense in the appeal process has been demonstrated. In my view the Council has demonstrated how it has given appropriate consideration to the effect of the development proposed, having undertaken a reasonable procedural approach at application stage. Indeed, as referenced above, I reached the same overall conclusion as the Council in respect of the merits of the development proposed.

⁴ There is some ambiguity as to whether the Council's tree officer and forestry officer are one and the same, nevertheless the Council have clearly explained that the proposal was considered by an officer with an arboricultural specialism.

Conclusion

11. Having taken account of all other matters raised, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Accordingly, with reference to the approach in the Guidance, an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR