



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: 23 June 2017

Costs application in relation to Appeal Ref: APP/D0840/W/17/3168034 24 Edgcumbe Road, St Austell, PL25 5DX

- 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 Lomax 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 an 'additional dwelling and associated works'.
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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 In this context the appellant contends that the Council introduced substantively new material at appeal, incorrectly attributed weight to a former policy, and failed to substantiate their reasons for refusal.
3. The appellant has clarified in correspondence dated 8 May 2017 at appeal that the new material which he contends was introduced was to 'link the proposed felling of a TPO [Tree Preservation Order] tree at the subject property to the application'. Whilst I appreciate that the TPO is referenced in the Council's appeal statement, this appears to be by way of factual update as the TPO was confirmed on 3 May 2017 and a related appeal dismissed on 10 May 2017 (both events occurring during the lifetime of the appeal).
4. There is no explicit statement within the Council's appeal statement that the proposal would directly compromise the Lawson Cypress protected by the TPO.² Moreover the conditions put forward by the Council at appeal are those originally set out in the officer report related to application Ref PA16/08678. Condition 4 thereof relates to ensuring that construction proceeds in a manner so as to safeguard the wellbeing of that tree. It cannot therefore be said that the Council have altered their position in this regard or introduced extraneous material.

¹ Reference ID: 16-030-20140306.

² Paragraph 5.38 may be read so as to imply a connection in this regard, however this is not definitive, and in any event the plans show the Cypress as retained.

5. As explained within the associated appeal decision the grouping of properties around no 24 was formerly identified via policy SA4 of the Restormel Local Plan adopted originally in October 2001 ('the former plan') as part of an 'Area of Special Character'. Policy SA4 is explicitly acknowledged in both the Council's officer report and appeal statement as no longer part of the statutory development plan. Indeed paragraph 8 of the appeal decision illustrates that the characteristics of the area described in policy SA4 are exhibited in the present, albeit that the policy itself no longer applies.
6. Whilst members are not bound to accept the recommendations of their officers, in doing so they must act reasonably and on the basis of valid material considerations.³ On occasion the substance of the Council's appeal statement is rather strained, such as the significance of the effect the Council contend will result to long-range vistas of the townscape, and there is limited evidence of the consideration given to matters of character and appearance in the associated committee minutes before me.
7. Nevertheless within their appeal statement the Council present a reasonably thorough defence of their position. Consideration is given, amongst other things, to the character of the surroundings of the appeal site, the pattern of nearby development, and to the prominence of the appeal site in the landscape. In this context the Council cannot be said to have acted unreasonably in terms of failing to consider or clearly misrepresenting an issue, but rather have reached a judgement based on suitable evidence. Whilst I have reached a different judgement, I cannot conclude that the Council acted in a demonstrably unreasonable manner in opposing the development proposed.
8. For the above reasons, and having taken account of all other matters raised, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Accordingly, and with reference to the approach in the Guidance, an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR

³ Guidance Reference ID: 21b-016-201040306.