



Costs Decision

Site visit made on 24 July 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 9 August 2017

Costs application in relation to Appeal Ref: APP/D0840/X/17/3173763 The Old Chapel, Orchard Lane, Helford, Helston, TR12 6JX.

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S E Jacobs a partial or full award of costs against Cornwall Council.
 - The appeal was against the refusal of an LDC for the proposed construction of two single-storey outbuilding, new access and associated hardstanding area.
-

Decision

1. The application is refused.

Reasons

2. Planning Practice Guidance advises that costs may 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.
3. The applicant makes application either for a full award owing to the Council's approach to the appeal; or, a partial award, owing to the Council introducing substantial new evidence and new reasons for refusal and/or for maintaining refusal reason 1. In particular, the reason for refusal is wrong in law as the Article 4 Direction does not remove PD rights under the GDPO 2015; the objection to the outbuildings is wrong in law having regard to the Emin case; the Council has not consulted a lawyer; the Council has introduced a new reason for refusal; the Council now say they have insufficient information; and, the Council failed to give notice prior to the Statement of Case that entirely new objections would be raised.
4. The Council's reason for refusal is not wrong in law as indicated in my decision letter. The Emin case has no bearing on the decision in the light of my conclusion on the current validity of the Direction. I consider that the Council has understood the evolution and applicability of the relevant legislation and the restrictions thereon. The Council has taken a collaborative approach between its Appeals and Legal teams in preparing its case. Whether or not a party chooses to consult a lawyer is a matter for that party and does not represent unreasonable behaviour in itself.
5. Whilst it would have been helpful had the Council sought additional information at an earlier stage, they did not. Notwithstanding this, the onus of proof in an LCD case rests with the applicant and Guidance states that applications must be accompanied by sufficient factual information for the Council to understand

exactly what is involved (paras 17c-005 and 006). Whilst the applicant provided further details subsequent to the Council's Statement of Case, this was nevertheless inadequate for me to be satisfied that the proposed works could be achieved on a steeply sloping site to satisfy the requirements of the GPDO 2015. The cost of providing such information is a cost borne by the development whether it is a cost incurred prior to the determination of the application or during the appeal process. Even had I found that the Council had acted unreasonably on this matter, which I do not, the behaviour would not have led the applicant to incur unnecessary or wasted expense in the appeal process as the information would have been required in any event.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and that a full or partial award of costs is not justified.

P N Jarratt

Inspector