



Costs Decision

Site visit made on 9 August 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 22nd August 2017

Costs application in relation to Appeal Ref: APP/D0840/W/17/3175043 39 Tregea Close, Portreath, Redruth, Cornwall TR16 4TR

- 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 Roger Rossignol 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 'works carried out in back garden of property including decking, fence and shed & extension of garden'.
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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 The appellant's application for a full award of costs is both in relation to substantive and procedural matters.
3. Substantively, the appellant contends that the development proposed via application Ref PA16/11246 should clearly have been permitted,² with particular reference to Council officer advice that 'it would be difficult to refuse the application and a challenge would likely be successful'.³ In summary, the appeal related to whether or not the effect on ecology from residential development extending into an ecology buffer zone is acceptable.⁴
4. I explained in the associated appeal decision that the proposal results in the reduction of natural habitat within the ecology buffer zone. This zone was specifically established to conserve or enhance ecology in connection with a previous permission (which enabled the creation of No 39 Tregea Close). I further explained in the associated decision how the ecology buffer zone was established as a whole entity, and protected accordingly through a subsequent management plan which relates to owners and a management company. I also set out how, based on the evidence before me, that there was insufficiently

¹ Reference ID: 16-028-20140306.

² With regard to Guidance Reference ID: 16-049-20140306.

³ As reproduced in the appellant's costs application.

⁴ The buffer zone established in relation to planning permissions Ref PA11/01245, PA12/02760, PA12/07713 and associated documents including an Ecological Impact Assessment supporting the first, plan P1221-SP-002-F supporting the second, and a Landscape Maintenance & Management document associated with the third.

compelling justification to allow the development in this instance, particularly when comparing the situation of No 39 to that other properties nearby (and the potential for similar development elsewhere to lead to further harm).

5. Council Members are not bound to accept the recommendations of officers, however in doing so must act reasonably and on the basis of valid material considerations.⁵ The harm that the Council considers results from the development is clearly articulated in their statement of case at appeal, as is reference made to the benefits of the proposal to the appellant and the potential for a precedent to be set by the development. In this context, and as my position regarding the substantive merits of the development accords with that of the Council, I cannot conclude that the Council have acted unreasonably in maintaining their opposition to the development.
6. Procedurally the appellant contends that the Council's pre-application advice in relation to the development related not to the effects thereof on ecology, but rather exclusively to compliance with the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO').⁶ Whilst that is the case, the Council's pre-application advice was nevertheless that planning permission would be required, and moreover the shed or summer house would have required permission in any event.⁷
7. Therefore whilst it would have been beneficial for the Council's pre-application advice to refer to matters of ecology, this would not have affected the need to apply for planning permission (an action only taken retrospectively by the appellant). Moreover the Guidance explains that pre-application advice is not a substitute for a formal Council decision, and therefore pre-application advice would not have prejudiced the Council's ability to refuse a subsequent application for permission.⁸

Conclusion

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

⁵ Guidance Reference ID: 21b-016-20140306.

⁶ Ref PA16/01865/PREAPP, Schedule 2, Part 2, Class A(A.1)(a) of the GPDO in particular.

⁷ Condition 4 of planning permission Ref PA11/01245 withdrew permitted development rights under Schedule 2, Part 1, Class E of the GPDO.

⁸ Reference ID: 20-011-20140306.