
Costs Decision

Site visit made on 28 August 2019

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 18th September 2019

Costs application in relation to Appeal Ref: APP/D0840/W/19/3229068 OS Field 6482, Merritt Hill, Illogan, Cornwall

- 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 & Mrs Richards of K&R Blewett Ltd for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the development of 8 dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. With reference to the PPG², the applicants submit that the Council has acted unreasonably by preventing development which should have been permitted; that it has failed to produce accurate evidence to support its decision; and that it has made vague or generalised assertions about the impact of the proposal.
4. The officer report sets out a clear recommendation of approval to be considered by its elected members at the West Sub-Area Planning Committee (WSAPC) of the Council. Elected members of the Council are entitled to take a contrary view, and I accept that elected members often bring a greater understanding of an area or local knowledge to the decision making process. I also accept that matters of character and appearance can be subjective, however a decision must still be well founded and supported by evidence as appropriate.
5. The Council submits that the case for refusal was clearly set out in its refusal reason and appeal submissions. In this respect the minutes of the WSAPC of 19 November 2018 are brief and offer very little to justify the Council's position. Its statement of case is more detailed and seeks to support its decision, with reference to key features of the area identified in the Cornwall and Isles of

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

² Planning Practice Guidance Paragraph 049 Reference ID: 16-049-20140306

Scilly Landscape Character Study³ (LCS). Reference is made to the dispersed but dense settlement pattern, which is identified as a characteristic of the area in the LCS. In this respect the Council has referred to mature hedges on either side of the central portion of Merritts Hill and the dispersed nature of development, which gives views across fields. However, at my visit to the site I found this not to be the case in the context of the appeal site. The existing bungalows that run parallel to the site and front Merritts Hill have a suburban character, with boundaries at either side along this stretch of the road characterised primarily by low walls and domestic planting. I found no discernible views from the road out towards the undeveloped appeal site, and indeed the Council failed to evidence any specific views that would be affected by the proposal.

6. The Council accepts that the site is bordered on three sides by existing built form and bound by a hedge, but fails to explain why it does not then consider it to be enclosed by built form or a case of rounding off with reference to the Chief Planning Officer's Advice Note: Infill/Rounding Off. Furthermore, the Council has provided no evidence to explain why the gap between the settlements is important, or how the development would diminish the gap to the extent that the character and appearance of the area, including the identity of respective settlements, would be harmed.
7. The Council's reason for refusal is not well founded, having been supported by vague and generalised assertions about the proposals impact. The Council therefore acted unreasonably by refusing the application for a reason that could not be substantiated.
8. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicants. It is clear that the applicants have incurred unnecessary and wasted expense by lodging the appeal against a refusal that should have reasonably been permitted. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 & Mrs Richards of K&R Blewett Ltd, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Tucker

INSPECTOR

³ Landscape Character Area Description for Redruth, Camborne and Gwennap