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## Costs Decision

Site visit made on 10 September 2019

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 October 2019**

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### **Costs application in relation to Appeal Ref: APP/D0840/W/19/3231201 Storage Building adjacent to West Towan Farm (Easting 201442, Northing 49128)**

- 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 N Frampton for a full award of costs against Cornwall Council.
  - The appeal was against the refusal of planning permission for the conversion of domestic storage building to unit of holiday accommodation.
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### **Decision**

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

### **Reasons**

2. The 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 appellant provided thorough noise and odour assessments based upon robust methodologies. Additional surveys were completed to address some concerns expressed by the Council regarding timings. All of those surveys indicated that there would not be harm to living conditions as a consequence of the proximity of the proposal to extensive farming operations.
4. The Council's Community Protection Officer visited the site on one occasion and detected farm odours. However, there is no particular evidence that these odours were emitting from the nearby farm buildings or, in any event, were to such a degree that they would harm living conditions.
5. In respect of noise, the Council have provided no particular evidence of harm, but have instead based their assessment on their judgement that noise disturbance may occur. Whilst it may not be the Council's responsibility to carry out detailed noise assessments, suitable assessments have been provided by the appellant and they demonstrate that harm would not result. In this context, the Council's judgement that there may be disturbance as a result of the simple proximity of activity is not robustly supported by evidence.
6. I have acknowledged in my main decision that the submitted assessments are snapshots in time and so it is not possible to be certain that odour or noise would not be detectable at the site at some times. On occasion, this may exceed recommended levels for short times. However, I found no compelling

evidence that these events would occur with such frequency so as to harm the living conditions of future occupiers of the site.

7. Whilst it may be justifiable to consider the effect on the existing farm operation, and whether or not there was a need to cover matters of housing land supply, on the basis of the evidence available, I find the Council's submissions in respect of potential effects on living conditions to lack substance. They are somewhat vague and generalised. Moreover, objective analysis based upon the available evidence may have avoided the need for an appeal.
8. 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 N Frampton, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now 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.

*M Bale*

INSPECTOR