
Costs Decision

Site visit made on 24 September 2019

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Costs application in relation to Appeal Ref: APP/D0840/W/19/3232534 Lyndon House, East Hill, Blackwater, Truro, Cornwall TR4 8HW

- 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 P Medlin for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the erection of a bungalow & garage & alterations to existing access (re-submission of PA18/08030).
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Decision

1. The application for an award of costs is refused.

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. The applicant submits that the Council has acted unreasonably by imposing a financial burden on him in relation to the submission of a drainage strategy. Paragraph 033 of the Planning Practice Guidance² advises that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, although the behaviour and actions at the time of the planning application can be taken into account.
4. The parties agree that the site is located in a Critical Drainage Area. The request for a drainage strategy accords with paragraph 163 of the National Planning Policy Framework (the Framework), with a specific reference in footnote 50 to the need to provide site-specific flood risk assessment for development on sites which have been identified by the Environment Agency as having critical drainage problems. I accept that the applicant incurred additional costs to address this matter. However, I find that the Council acted proactively in requesting this information from the applicant and agreed an extension of time so that the information could be gathered, which demonstrates positive engagement. I therefore find the request from the Council to be reasonable and that it has not resulted in unnecessary or wasted expense at the appeal stage.

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

² Planning Practice Guidance Paragraph 033 Reference ID: 16-033-20140306

5. The applicant also submits that the Council acted unreasonably by demonstrating inconsistency in its decision making, with particular reference to Policy 21 of the Cornwall Local Plan Strategic Policies 2010-2030 adopted 2016 (CLP) and the nature of the site as previously developed land (PDL). Contrary to what the applicant suggests the Council acknowledged that the site comprises garden land in its reason for refusal, which it did not do in the previous reason for refusal³. Its PDL status does not automatically give it the appearance of a developed site. In my appeal decision I found it appropriate to refer to the site as having an undeveloped character, whilst accepting that it is PDL.
6. In the appeal decision I considered carefully the other appeal case referred to by the applicant⁴. Whilst Policy 21 of the CLP does not specifically require a proposal to be within or adjoining a settlement the Policy refers to access to services and facilities, and supporting text makes reference to accessibility and location. Taking this into account I found the circumstances of the case to differ significantly from the appeal before me, sufficient to cause me to come to a different decision. I also considered the pre-application advice that the Council gave in the context of a different site, referred to by the applicant. Again, I found the locational characteristics to be quite different to the proposal before me. As such, I find no evidence to suggest that the Council has behaved unreasonably by being inconsistent in its decision making.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andrew Tucker

INSPECTOR

³ PA18/08030

⁴ APP/D0840/W/18/3215936