
Costs Decision

Site visit made on 21 October 2019

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 6th November 2019.

Costs application in relation to Appeal Ref: APP/D0840/D/19/3232183 Tregarthen Barn, Tregarthen Farm, Tregarthen, Long Rock TR20 8YH

- 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 and Mrs Richards for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for 'Retention of existing structural post and proposed extension to balcony'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 PPG sets out that examples of unreasonable behaviour by local planning authorities which may result in an award of costs include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
4. The appellants contend that there is no conflict with the development plan or Council guidance; that the arguments in the Council's officer report have no substance and are not supported by an objective analysis; and that any significant concern regarding overlooking could have been mitigated by a planning condition to secure a landscape belt.
5. The Council's delegated report identified that the garden of Tregarthen Farm House is predominantly concealed from view from the existing balcony. From what I saw at my site inspection I agree with that assessment. The appellants suggest that the Council was referring to Tregarthen Farm House itself, however the report clearly refers to the garden of that property.
6. The Council recognised that some degree of overlooking of the garden of Tregarthen Farm House already exists but considered that the appeal proposal

would significantly increase the intensity and immediacy of overlooking beyond that of the existing balcony and openings in the host property. The factors that led to this conclusion were set out in the delegated report and the planning balance was considered. Accordingly, although I have reached a different conclusion to the Council on the appeal, I consider that the Council had regard to both the development plan and other material considerations, including the existing situation on site, when determining the scheme. The reason for refusal has been adequately substantiated by the Council in its delegated report and supported by reasoned analysis. Furthermore, the reason was precise, detailed and clearly stated the local and national policies and guidance with which a conflict was identified.

7. The Council considered whether a condition for a privacy panel would mitigate against the harm that it identified. It concluded that it was not an acceptable solution as it would result in other harmful impacts. While the Council did not consider whether a landscaping scheme would be effective, I have no evidence to suggest that any such scheme was submitted as part of the application or with the appeal. The Council would therefore have been unable to assess the effectiveness of any landscaping in mitigating against the harm it identified. Nor could it consider any other impacts of such planting. I therefore consider that the Council did not act unreasonably in failing to consider a proposed mitigation scheme for which they had no details.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

L McKay

INSPECTOR