



Costs Decision

Site visit made on 10 December 2019

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2019

Costs application in relation to Appeal Ref: APP/D0840/W/19/3236914 8 Upper Polmear, Par PL24 2FY

- 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 Shane Harman for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of grant subject to conditions of planning permission for 'erection of 16 residential units comprising of 50% affordable dwellings and 50% open market dwellings'.
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Decision

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

Reasons

2. The appellant informs me that the Council took in excess of 12 months to make a decision on his application. However, the NPPG¹ advises that costs may only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the *appeal* process. Hence, any expenses incurred as a result of the Council's delay in assessing the application are beyond the scope of this particular costs application.
3. The Council refused the application as it would have resulted in the loss of affordable housing. This was a consequence of the application being made under section 73 of the Town and Country Planning Act 1990 and is made clear in the Council's evidence. I agree with this stance in my main decision and hence consider the reasons for refusal to be justified.
4. While the Council approved similar balconies on other nearby properties, these applications were made under section 78 of the Act. The current proposal, on the other hand, was presented as an application to vary existing conditions under section 73 of the Act. As such, it was notably different from the other planning applications because (unlike the section 78 applications) it would have potentially jeopardised affordable housing. The Council were therefore not being inconsistent in their decision to refuse the application.
5. The National Planning Policy Framework advises that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

¹ National Planning Practice Guidance.

6. As the Council had no objection to the proposed balcony, the appellant argues that the disputed conditions 1 and 17 do not meet these tests. However, even if this is the case, the overriding planning issue in the appeal was the potential loss of affordable housing that would have occurred. As such, this was not an instance where the Council prevented or delayed development which should have clearly been permitted.
7. While the appellant criticises the Council for drafting a section 106 agreement that was not sufficiently flexible to accommodate the proposed balcony, that document relates to a planning permission dating from August 2015 and is entirely separate from the current planning application process. It was always open to the appellant to revise the section 106 at his own expense.
8. Although I exercised discretion to allow the appeal under section 78 of the Act, the Council were presented with an application under section 73. They acted reasonably in determining the proposal on that basis and gave clear reasons for their decision to refuse the development.
9. Overall, I consider that the Council has justified their actions and hence acted reasonably. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Colin Cresswell

INSPECTOR