



Costs Decision

Site visit made on 18 December 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Costs application in relation to Appeal Ref: APP/D0840/X/18/3218051 127 Lily Way, St Merryn Holiday Village, Padstow, Cornwall PL28 8TG

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Cornwall Council for a full award of costs against Mr Simon Morland.
 - The appeal was against the refusal of a certificate of lawful use or development for residential use.
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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 (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice.
3. The Council's costs application is on the basis of the substantive issues raised by the appellant. The PPG states that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. I have dismissed the appeal and that decision turns largely on a misunderstanding by the appellant of the law relating to the periods within which enforcement action may be taken. There was little evidence submitted with the appeal in order to address the Council's reason for refusal the application. As such the appeal had no chance of success.
4. The Council suggests that the appellant's experience, also as the appellant, with another similar recent case at 135 Jasmine Way, St Merryn (ref APP/D0840/X/18/3197766) should have given him a different understanding. That other case did not turn on the same interpretation of the s171B(4)(b) of the Act that has been presented in this appeal. However, from what has been provided to me, the cases appear to be otherwise very similar. The reasoning of the other Inspector is very clear in explaining what the decisive legal points are and the need for evidence.
5. There is no indication that the appellant sought any legal advice or advice from

a planning consultant following the Council's decision in the present case or after the outcome and reasoning of the Inspector in the other appeal. The application for an LDC in this case was submitted after the 28 August 2018 decision relating to No 135 Jasmine Way. Following the refusal, the option to submit the appeal and its prospects for success should have been considered more thoroughly. I consider that in pursuing the appeal, the appellant has acted unreasonably.

6. The Council has administered the appeal and has provided statements to support its case. They have therefore been put to wasted expense.

Conclusion

7. The appellant's unreasonable behaviour has caused the Council to incur wasted expense and so the conditions for an award of costs as set out in the PPG have been met. Whilst the appellant does not appear to have been professionally advised, that does not justify the submission of an appeal that had no reasonable prospects for success. An award of costs is therefore justified.

Costs Order

8. 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 Mr Simon Morland shall pay to Cornwall Council, 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.
9. The applicant is now invited to submit to Mr Simon Morland, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Harwood

INSPECTOR