The Planning Inspectorate

Costs Decision

Site visit made on 16 December 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Costs application in relation to Appeal Ref: APP/D0840/W/19/3233146
The Eyrie, Battery Hill, Portreath, Cornwall TR16 4NP

- 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 Stuart Powell for a full award of costs against Cornwall Council.
- The appeal was against the refusal of planning permission for the construction of two dwellings.

Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably where this has directly caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The applicant submits that the Council failed in its officer report to properly engage with the benefits of the scheme, particularly those around climate change. Engagement with the scheme's benefits may have resulted in planning permission being granted. The absence of reference to climate change within the officer report obliged the applicant to undertake additional work. It is further contended that the Council failed to review its case promptly when the appeal was lodged, at which point it should have set out whether a climate change specialist could or should be appointed. Specialist evidence should have been produced regarding the AONB. It follows that the Council's case has been consistently generalised, inaccurate and vague, ignoring the applicant's LVIA.

4. The Council's officer report recognises Policy 26 'Flood risk management and coastal change' to be relevant to the assessment and identifies the requirement to encourage the growth of Portreath to meet local needs. It also apportions weight to the applicant's 'rebuttal', which was a key document setting out the applicant's climate change argument. As such, whilst this is an issue that could have been assessed in greater and clearer detail, I do not share the view that the Council failed to address it altogether. The officer report concludes with a planning balance, identifying the Council's opinion as to the benefits of the proposal. There is no evidence that a more thorough approach to the climate change issue would have led to a different decision.

5. There is no direct evidence to establish that the additional climate change work undertaken at the appeal to amplify the applicant's case was obligatory as a consequence of the Council's conduct, particularly as this aspect of the applicant's case was already set out in the rebuttal statement. The PPG is clear

that the parties involved in the appeal normally meet their own expenses, and I consider this evidence to fall within that bracket in these circumstances.

6. The Council's officer report and appeal statement make direct reference to the applicant's LVIA but set out its own analysis as to the effect of the scheme on the AONB. The analysis is grounded in the landscape evidence the Council had at hand and is presented in adequate detail, applying reasoning I do not find to be vague, inaccurate or generalised. The matters in dispute are of planning judgement, and the submission of further or corroboratory specialist evidence is not a prerequisite to the Council forming an initial judgment or maintaining its stance at the appeal. It is for me to consider the weight apportionable to the evidence at the appeal, and I have ultimately agreed with the Council.

7. The applicant has also made reference to the Council's statutory duties under Section 19 of the Planning and Compulsory Purchase Act 2004. However, this relates to plan making, not decision making. Whether or not the 'titled balance' should apply to the appeal proposal is not germane to this costs application.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Matthew Jones

INSPECTOR