
Costs Decision

Site visit made on 9 June 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Costs application in relation to Appeal Ref: APP/D0840/W/20/3245100 Grain Store, Tolcarne Merock Farm, St Mawgan, Newquay, Cornwall

- 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 Richard Jackson for a full award of costs against Cornwall Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of the existing building and erection of a new dwelling with residential curtilage including a swimming pool with associated works.
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Decision

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

Procedural Matters

2. The costs application submitted by the Applicant does not expressly state whether a full or partial award of costs is sought. However, by reason of the information contained within the costs application, I have interpreted the application as being as an application for a full award of costs, and I have considered the costs application on that basis.

Reasons

3. 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 and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Parties in planning appeals and other planning proceedings normally meet their own expenses.
4. The PPG indicates that a Local Planning Authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance provides that if the Local Planning Authority will fail to determine an application within the prescribed time limits, it should give the applicant a proper explanation for the delay. Where this leads to an appeal against non-determination, they should also explain why permission would not have been granted had the application been determined within the relevant period.
5. The PPG further makes it clear that a Local Planning Authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.

6. The Council acknowledged receipt of the application on 2 October 2019, confirming that the application was received on 25 September 2019 and advising that a decision was due by 20 November 2019. This letter requested further information from the Applicant with regards to proposed site levels and proposed finished floor levels. The evidence before me confirms that the requested information was sent by the Applicant's agent on 3 October 2019.
7. On the 18 October 2019 the Council contacted the Applicant and acknowledged the position with regards to the potential fallback position under the previously permitted prior approvals for conversion of the existing agricultural building to dwellings, but indicated that the design of the appeal proposal would not be in keeping with the surrounding area when compared to the agricultural appearance of the existing barn.
8. In response the Applicant provided a booklet which indicated that a number of amendments to the design of the appeal proposal could be made. A period of consultation with relevant parties followed in respect of the proposed amendments, with further correspondence from the Council being issued to the Applicant on the 18 November 2019 advising that, amongst other matters, that the design of the proposal was not acceptable. The evidence indicates that the Applicant responded to these points on the 11 December 2019.
9. In respect of whether the Council delayed development that the Applicant maintains should have been permitted by reason of material planning considerations, it will be seen from my decision that whilst I disagree with the Council with regards to whether there could be a greater than theoretical possibility of the fallback position in relation to prior approvals permission, given the current circumstances surrounding Covid19, in considering the fallback position I have concluded that the appeal proposal would have a greater harmful effect on the character and appearance of the surrounding area and on the intrinsic character and beauty of the countryside than the development that would result from the prior approval permissions. This reflects the findings of the original case officer at the Council who advised that the design of the proposal should be more in keeping with the agricultural appearance of the existing barn.
10. In respect of the communications between the Council and the Applicant during the determination of the application, it would appear from the evidence before me that whilst there were short delays in contacting the relevant case officer, it appears that, as above, contact was made and there were some discussions on the merits of the proposal, even though agreement between the parties was not reached. Whilst I acknowledge the submissions of the Applicant with regards to it being known that the original case officer would be leaving the Council, this unfortunately happened over the Christmas and New Year period and during the period when the Applicant's communication of the 11 December 2019 was being considered by the Council.
11. With regards to the timescales for the determination of the application, the Council failed to determine it within the statutory timescale. Notwithstanding that, had the Council determined the application it would have refused it for the reasons set out in the appeal documentation. Given the above in relation to the Council's original concerns regarding the design of the proposal, the Applicant would have needed to appeal against the decision of the Council anyway to

gain permission for the development (or submit a further application to the Council).

12. Furthermore, from the evidence before me, the Council had given an indication to the Applicant that the application would be refused for the reason put forward by the Council in its appeal statement which provided sufficient evidence to substantiate their case at appeal. To my mind, despite the failure to issue a decision notice there has not been any unnecessary expense incurred by the Applicant.

Conclusion

13. Taking all of the above into consideration I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore an award of costs is not justified.

A Spencer-Peet

INSPECTOR