The Planning Inspectorate

Costs Decision

Site visit made on 24 September 2020

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2020

Costs application in relation to Appeal Ref: APP/D0840/D/20/3248260
Koh I Noor, 3 Higher Lidden Road, Penzance, TR18 4NZ

- 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 L McDougall-Brown for a full award of costs against Cornwall Council.
- The appeal was against the refusal of planning permission for proposed car port (variation of previous design).

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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.

3. The appellant's application for costs raises both substantive and procedural points. The PPG states that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or if they have behaved unreasonably from a procedural point of view.

4. The appellant contends that the Council failed to engage with the Appellant at the application stage and that its refusal of planning permission bowed to pressure from interested parties.

5. Most of the appellant's concerns in this respect relate to the period leading up to the determination of the planning application. The PPG confirms that costs cannot be claimed in such circumstances, but that the behaviour at the time of the determination of the planning application can be taken into account when considering whether or not costs should be awarded in relation to unreasonable behaviour during the appeal process.

6. Whilst the appellant has made reference to the representations of interested parties in relation to the previous refusal, my attention has not been drawn to any such submissions made in relation to this appeal. Indeed, the Delegated Report states that in response to the appealed application there were no objections from interested parties, but that a Local Member supported refusal.

7. Any outstanding complaints that the appellant may have in relation to the administration of the planning application and/or the authority's procedures, including failure to engage with the appellant, are matters that should be taken up directly with the local planning authority.

8. The appellant contends that the local planning authority have been inconsistent in their approach to the appeal scheme compared with similar developments permitted in the area, that their assessment of the character of the area was incorrect, that they were not in a position to reach the decision they did and prevented development which should have been permitted.

9. Whilst I have found the appeal proposal to be acceptable, in relation to its impact on the character of the area, that finding was based on the evidence presented by the local planning authority, the policies of the development plan and National Planning Policy Framework, and my own observations on site.

10. The local planning authority's evidence comprised of its reason for refusal, its Delegated Report and relevant policy documents. These provided, in my view, a precise explanation of the local planning authority's objections to the appeal scheme.

11. The evidence submitted by the local planning authority was consistent with the guidance on Householder Appeals set out in the Procedural Guide – Planning Appeals – England (July 2020). Paragraphs C.7.2 – 7.3 to Annex C of this Guide state that a local planning authority's case should comprise its reasons for refusal, report and any documents that accompany its Questionnaire, and that it will not normally be able to send any additional information unless requested to do so or in response to a query raised by the Inspector. I am entirely satisfied that the information submitted by the local planning authority enabled me to fully understand their objections to the appeal.

12. In relation to the character of the area, such an assessment is subjective and is a matter of judgement, on which opinions will differ. It is also a matter for the decision-maker to decide what weight should be accorded to such factors. In relation to other approved developments in the area, no two cases are ever the same or in my view directly comparable.

13. The appellant also contends that the local planning authority accorded too much weight to the previous refusal. The local planning authority were entitled to refer to this refusal as a material consideration, but there is no evidence that would lead me to the find that this unduly influenced their decision. Indeed, the Delegated Report states that the appeal proposal included a number of amendments to the previously refused scheme, but that these changes did not address the local planning authority's earlier objections.

14. I cannot agree, therefore, that the local planning authority has acted unreasonably in this case. The appellant contends that the local planning authority's actions are contrary to the 'reasonableness' test set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223*. That is not a view I share. For the above reasons, I find that the appellant was not put to unnecessary or wasted expense in the appeal.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

G Roberts

INSPECTOR