



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: 12 October 2020

Costs application in relation to Appeal Ref: APP/D0840/D/20/3250128 16 Kenstella Road, Newlyn, TR18 5AY

- 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 S Haffenden for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for conversion of existing ground floor building, extension to provide first floor balcony
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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. Examples of the type of behaviour that may give rise to a substantive award against a local planning authority include preventing development which should clearly have been permitted and acting contrary to or not following established case law.
3. The appellant contends that the local planning authority's decision was devoid of any appreciation that if the single storey extension was reduced in length it could be implemented under permitted development, that they did not understand this fallback position or attach appropriate weight to it in line with relevant case law. Had they done so, the appellant contends that this would have resulted in an alternative outcome, saving on the expense of an appeal.
4. The local planning authority's evidence to this appeal included its Delegated Report. The Report states that the appeal proposal was not permitted development and gave reasons for reaching that finding. The Report then continued by stating that the potential to implement a smaller extension under permitted development rights should not be used as the basis for approving the extension that was the subject of the application.
5. Based on this, I am satisfied that the local planning authority were aware of the potential for a smaller extension to be built as permitted development. Whilst the Report does not refer to this specifically as a fallback option or refer to relevant case law, the local planning authority did regard the ability to build a smaller extension under permitted development to be a material consideration in their decision.

6. The local planning authority determined, by exercising their own planning judgement, that the proposed extension (which the local planning authority refer to as being 33% larger than that which could be built under permitted development) would result in a harmful impact on the living conditions of the occupiers of the neighbouring property.
7. The evidence before me indicates, therefore, that in reaching its decision the local planning authority determined that the ability to build a smaller extension, as permitted development, did not affect the findings it had reached and did not justify granting permission for the proposed extension.
8. I have determined that the appeal proposal would be unacceptable. In reaching that finding, I have had regard to the fallback position and accorded it due weight. Even so, the existence of that fallback has not, for the reasons I have given in my Appeal Decision, affected the findings I reached.
9. For the above reasons, I cannot agree that the Council has acted unreasonably in this case.

Conclusion

10. 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