
Costs Decision

Site visit made on 1 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 30 December 2020

Costs application in relation to Appeal Ref: APP/D0840/W/20/3257271 Land East of Mawgan Porth, Mawgan Porth, Newquay

- 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 Curtis of Mawgan Vale Railway 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 the construction of miniature railway attraction, including indoor and outdoor attractions and amusements, and associated development.
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Decision

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

Reasons

2. 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.
3. 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.
4. 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.
5. The Applicant's claim principally relates to the time taken by the Council to progress the application prior to the appeal against non-determination, but further includes claims relating to preventing or delaying development that should clearly have been permitted and that the Council gave vague, generalised or inaccurate assertions about the proposal's impact.

6. On the first of these issues, it is clear from copies of correspondence submitted with the appeal and costs application, that a number of extensions of time were agreed between the Applicant and the Council for determination of the planning application. In this regard, the evidence indicates that the Applicant initially agreed to extensions whilst the Council were awaiting a decision in the Court regarding application of Saved Policy 14 of the Restormel Local Plan, which concerned development within areas designated by the Restormel Local Plan as Areas of Great Landscape Value (the AGLV).
7. The details provided show that communication between the Applicant and the Council continued during the consideration of the planning application and that the Council did agree to a request from the Applicant for an extension in order to await the outcome of the Judicial Review. It is noted that the Council did advise the Applicant that such a request would not normally be considered, but that in this instance the Council would agree to the extension.
8. Following conclusion of the Judicial Review, the Council contacted the Applicant and confirmed that the Applicant's agent was still engaged with regards to the application. Following that discussion, it is apparent that the Applicant agreed a further extension in order that the Council's Officer could complete the report which would recommend refusal of the planning application. Having not received a decision notice, the Applicant confirmed to the Council that an appeal on the grounds of non-determination would be made.
9. In light of the above, it was clear that there was contact and dialogue between the Applicant and the Council during the assessment of the planning application. This culminated in the Case Officer indicating to the Applicant that the proposal could not be supported and would be refused on the basis of harm to the character and appearance of the area.
10. While it is noted that the Applicant contends that the planning application could have been determined during 2019, it is apparent that the Council agreed to extensions of time during that period at the request of the Applicant. In this respect, the Council's actions do not, in my view, amount to unreasonable behaviour. Rather, the Council demonstrated flexibility in accepting the Applicant's request for an extension in advance of reaching any final decision.
11. The application was not determined by the Council, and while I can understand the Applicant's frustration at the delays, I have seen no evidence that the Council behaved unreasonably. The Council indicated that it would have refused the application if it had been able to determine it and provided the Applicant with the grounds on which it would be refused. It is not therefore the case that the appeal could have been avoided and therefore the Applicant has not incurred unnecessary expense in this respect.
12. Following the submission of an appeal on the grounds of non-determination, the Council provided a comprehensive appeal statement that clearly explained why they would have refused the application. The Council's statement provided a detailed assessment of the proposal, the site and its surroundings, and identified the issue of concern being the effect of the proposal on the character and appearance of the area with particular regard to the site's location within the AGLV. Furthermore, within the statement the Council has provided an analysis of the potential benefits associated with the proposal. With regard to the effect of the proposal on the AGLV, this issue is subjective and therefore assessing any effect is a matter of planning judgement.

13. It will be seen from my decision that whilst I agreed with the Council that there would be some harm to the character and appearance of the area and to the AGLV, the weight to be attached to the appeal scheme's compliance with regards to tourism development and in respect of the balanced mix of benefits, outweighed that harm.
14. I find that the statement of case provided by the Council was well constructed and comprehensive in terms of why the Council considered the proposal would have a harmful effect on the character and appearance of the area and why the Council contended that the benefits of the scheme would not outweigh that harm. Accordingly, while I may disagree with the Council's final conclusions with regards to the appeal scheme, the Council has not prevented or delayed a development that should have been clearly permitted nor have the Council provided vague, generalised or inaccurate assertions about the proposal's impact. For these reasons, I conclude that the Council has not acted unreasonably in these respects.

Conclusion

15. In conclusion, I find that the Council has not acted unreasonably in the appeal process and the Applicant has not been put to unnecessary or wasted expense. Accordingly, an award of costs is not justified.

A Spencer-Peet

INSPECTOR