



Costs Decision

Site visit made on 11 December 2020

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3259422 North Barn, Boquio Farm, Access to Boquio Farm, Farms Common, Wendron TR13 0JH

- 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 Roger Young for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for Demolition of existing agricultural building and erection of two dwellings.
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1. The 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 or wasted expense in the appeal process. The applicant considers that the Council acted unreasonably by: not determining the appeal in a consistent manner with other similar cases; adopting a confused approach, failing to take account of relevant matters and referring to irrelevant policies; and failing to communicate with the applicant during determination of the planning application.
2. Consistency in decisions is important. However, whether the Council has previously taken a different approach to proposals for similar development in the open countryside does not indicate that the appeal proposal is of itself acceptable. The examples put to me that are said to be similar were also all found by the Council to be acceptable with regards to matters of character and appearance, which was not the case with the appeal proposal. Accordingly, the examples are not directly comparable.
3. Even though the Council's approach and findings in relation to the principle of development of the appeal proposal were different in those other cases, its concerns regarding its effect on the character and appearance of the surrounding area also form part of the refusal reason. The Council's approach and findings on the principle of development in this case are therefore not the only matter at the appeal. Accordingly, the planning application would not have necessarily been approved – and the need for this appeal avoided – if the Council had taken a different approach to the principle of development.
4. The PPG sets out that there is a risk of a substantive award of costs for not determining similar cases in a consistent manner. However, because the issues raised by the appeal proposal are different to those of the example cases put to me, the Council's decision making could not be described as unacceptably inconsistent. The lack of other example cases from the Council does not lead me to a different conclusion. In this instance, and irrespective of the Council's approach and findings in the other cases put to me, I have also found that the

appeal proposal would not comply with Policy 7 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP). Furthermore, having regard to the current agricultural status of the appeal site and the definition of previously developed land in the National Planning Policy Framework (Framework), it seems to me that it cannot be described as making use of previously developed land.

5. The Council's Officer Report sets out the Council's concerns on the planning application in a relatively clear and concise manner. It takes account of relevant matters, including the fallback position, and refers to planning policies which are relevant to the acceptability of the appeal proposal. Setting out the Council's approach to considering the merits of the proposal, it does not appear to be particularly confused or difficult to follow. Although it refers to limited improvement, it also details the appeal proposal's alleged harm on the character and appearance of the surrounding area.
6. The Officer Report therefore provides sufficient understanding of the Council's concerns and its approach to determining the planning application. Setting out the reason for refusal, the Decision Notice is also complete, precise, specific and relevant to the development proposed, and details the alleged harm and planning policies that the Council considers the development conflicts with. Accordingly, it is clear why the Council determined to refuse the application. In coming to this view, I have taken into account that not all the concerns set out in the Officer Report are covered in the refusal reason.
7. The Council's appeal statement subsequently elaborates on the refusal reason and the Council's concerns with the proposed development, and includes sufficient detail to substantiate its position. Although its reference to the size of the proposed curtilage compared with the fallback scheme is essentially a new issue, it does not form a significant part of the Council's statement and relates to the Council's concerns regarding character and appearance. It cannot therefore be considered to be a new reason for refusal. With the appellant's final comments on the appeal also only including one minor reference to the matter, it seems to me that the introduction of the issue has not resulted in any material additional expense.
8. The applicant may disagree with the weight afforded by the Council to the fallback position. However, the PPG is clear that it is for the decision maker to decide what weight is to be given to the material considerations in each case. In this instance, the Council clearly considered the fallback position, with the Officer Report also setting out the weight afforded to it and why. My attention has been drawn to wording in the Officer Report that is similar to either part three of CLP Policy 7 or the text in a previous version of the Council's 'Replacement dwellings in the Countryside Guidance Note'. Be that as it may, other relevant CLP policies include reference to enhancement. This matter does not therefore lead me to a different overall conclusion.
9. I acknowledge the applicant's frustrations regarding their attempts to discuss the planning application with the Council and that such discussions may have resolved some of the Council's concerns. However, the evidence before me does not indicate that the appeal could have been avoided had the main parties discussed the planning application during the Council's determination of it. The Decision Notice also sets out that the Council considered that the issues identified in the refusal reason could not have been resolved through negotiation. Furthermore, although the PPG and Framework encourage local

planning authorities to take a positive approach and work proactively with applicants, I have little substantive evidence which indicates that pre-application discussions could not have been undertaken had they been requested and that the Council was under an obligation to work with the applicant during the determination period.

10. Although I have come to a different overall conclusion to the Council and have allowed the appeal, this does not mean that it acted unreasonably in refusing the planning application. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR