

Costs Decision

Site visit made on 10 March 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3262615 Trannack Byre, Trannack Farm, Helston TR13 0DD

- 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 and Mrs Jewell 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 replacement outbuildings; Garage / Workshop, home office, play-room / study & occasional guest accommodation at Trannack Byre, Trannack Farm.
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Decision

1. The application is refused.

Reasons

2. The 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 directly caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicants assert that the Council was unreasonable in non-validating the planning application for the reasons it did, at the time it did, and without proper regard to the evidence submitted. The requested resolutions to the validity issue, a CLD or change of use application, were not open to the applicants. The Council also failed to visit the site.
4. DMPO Art 11(5) does provide Councils with the ability to non-validate a planning application at any time following the initial acknowledgment of the application, so long as the Council as soon as reasonably practicable notify the applicant that the application is invalid. The email correspondence between the case officer and the applicants indicates that the Council did so.
5. However, prior to the eventual non-validation of the application, the applicants provided, and explained in detail, case law which establishes unambiguously that the issue of curtilage is not one that typically turns on simply where a red line is drawn on a plan. There is little evidence that the Council engaged properly with this case law nor the substantive site-specific evidence provided.
6. Instead, the Council's last act prior to non-validating the application was to restate its argument about the 1999 site plan and make a vague reference to a review by the Council's legal team. That the Council has now sought to critique the relevant evidence, such as the statutory declaration, during the appeal is not an adequate substitute given that this is an issue which influenced the non-determination of the planning application.

7. It is quite common for LDCs to be submitted which seek to establish whether land falls within curtilage, albeit the fundamental issue should be correctly addressed as one of land use by the decision maker. If curtilage is disputed, a change of use application may also potentially resolve the matter in that it can provide a strong steer to the decision maker that land is within curtilage. However, given that the Council appeared to be conflating the two discrete issues of curtilage and land use in this case, I can appreciate the applicants' reticence about progressing with either of these options.
8. With regard to the absence of a site visit, whilst I can appreciate the situation last year with regard to the pandemic, I also note that the validity dispute went on for a great deal of time, through the Summer and into the Autumn. Given such and also considering the contentious nature of the curtilage issue, which should turn on site specific circumstances, it would have been appropriate and logically also helpful for the Council to have visited the site.
9. That all being said, the Council's appeal statement makes the argument that the proposed development would have an unacceptable effect on the character and appearance of the area. On this basis, it is evident that if the Council had considered the planning application to be valid, it would have refused planning permission anyway.
10. In addition, whilst I appreciate that the work undertaken to address the curtilage and validity issues would have come at a not inconsiderable cost to the applicants, the mainstay of this outlay arose before the appeal. The work involved during the appeal is confined to a section of the applicants' statement of case and is very much a replication of the arguments already made.
11. Drawing my findings together, I accept the applicants' submissions that the Council acted unreasonably prior to non-validating the application by not properly engaging with or following the evidence that had been submitted, which included case law. However, it is also my view that this did not directly cause the applicants to incur unnecessary expense in the appeal process.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. An award of costs is not justified.

Matthew Jones

INSPECTOR