
Costs Decision

Site visit made on 20 April 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2021

**Costs application in relation to Appeal Ref: APP/D0840/W/21/3266309
Last end of the Old Carthouse, Trebarvah Lane, Trebarvah, Rosudgeon,
Cornwall TR20 9NG**

- 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 Stuart and Samantha Firth for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for construction of dwellinghouse, landscaping and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that 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.
3. The applicants allege that the Council acted unreasonably during the course of the planning application, by taking too long to validate it, offering contradictory advice resulting in the submission of various iterations of the plans, and then referring the decision to Committee, which did not follow its Officers' advice. This, it is contended, has resulted in increased time and costs.
4. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application¹. However, all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour, and actions at the time of the planning application can be taken into account in my decision on whether or not costs should be awarded.
5. On the evidence before me, it appears that, at the time of the application, the Council engaged with the applicants in seeking to overcome objections to the proposals to enable a positive outcome. Although this process was frustrating for the applicants, it did result in a recommendation of approval when the application was reported to Committee. Determination of the application took longer than it should have, but the Council's attempts to negotiate a positive outcome did not represent unreasonable behaviour.

¹ Paragraph: 033 Reference ID: 16-033-20140306

6. The decision of the Council's Members to depart from the advice of its Planning Officers does not, of itself, amount to unreasonable behaviour. However, the PPG advises that a Council will be at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal, or if it makes vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In this case, there was a single reason for refusal, but it encompassed the two distinct issues that I identified in my decision letter. Both issues involved an element of subjective judgement on the part of Officers and Members, and it was not unusual, or unreasonable, for Members to have concluded differently.
7. On the issue of character and appearance and the impact on the Area of Outstanding Natural Beauty (AONB), there were conflicting views between the Planning Officer and the AONB Unit. The Committee Report explained why the Officer's recommendation did not accord with the objections raised by the AONB Unit, but it was not unreasonable for Members to give them greater weight. The Council's appeal statement provided a reasoned and detailed explanation of its specific concerns on this issue, with reference to policies and guidance. Whilst I came to a different conclusion in my decision, the Council did provide sufficient evidence to substantiate its reason for refusal on this ground.
8. In terms of the impact on the living conditions of adjacent occupants, the Officer's report identified that there would be overbearing/overshadowing impacts on neighbouring dwellings, but that these were not significant. Again, it was not unreasonable for Members to place greater weight on these impacts. The applicants provided additional evidence in their appeal statement in the form of a sunlight and daylight analysis in relation to the Building Research Establishment guidance. Not unreasonably, the Council did not contest this additional evidence in its appeal statement. It did, however, provide reasoned and specific evidence, albeit brief, to explain its concerns regarding the overbearing impact of the development. I concluded that there would be a harmful overbearing impact, so it follows that I find the Council provided sufficient evidence to substantiate its reason for refusal on this ground.
9. It is also contended that the Council unreasonably introduced a new issue, in referring to the impact of the development on a non-designated heritage asset, in its appeal statement. The PPG advises that a Council will be at risk of an award of costs if it introduces fresh and substantial evidence at a late stage, necessitating extra expense for preparatory work that would not otherwise have arisen, or prolongs the proceedings by introducing a new reason for refusal.
10. The Officer's report referred, in two places, to the appeal site lying within an historic former farming hamlet. The report also summarised the content of letters of representation that had been received, including reference to the former farming hamlet being a non-designated heritage asset. Whilst the reason for refusal did not use this term, it did refer to the development affecting the character of the historic farming hamlet. The contention that the development would be harmful to the historic built environment was not, therefore, a new issue, so it was not unreasonable for the Council to include evidence on this matter in its appeal statement.

11. The PPG advises that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. In particular, where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application².
12. For the reasons given, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR

² Paragraph: 050 Reference ID: 16-050-20140306