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## Costs Decision

Site visit made on 25 June 2021

**by Jessica Graham BA(Hons) PgDipL**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 August 2021**

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### **Costs application in relation to Appeal Ref: APP/D0840/X/21/3269518 Panorama, 1 Barnoon Terrace, St Ives, Cornwall TR26 1JE**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Ms Kim Usher for a full award of costs against Cornwall Council.
  - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the demolition of a section of boundary wall and attached outbuilding under 50 cubic metres (A section of low wall along the boundary is shown to remain).
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (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. By letter to the Applicant dated 13 September 2018, written in response to a pre-application enquiry, the Council set out its understanding of *The Town and Country Planning (Demolition – Description Of Buildings) Direction 2014* ("the 2014 Direction") and concluded that "Therefore, the Article 4 cannot be engaged with and cannot be used in the determining of the application." As the Applicant fairly acknowledges, pre-application advice is not binding upon the Council. There is, then, nothing inherently unreasonable about the Council's departure from this advice in its approach to determining the subsequent LDC application.
4. However, as the Applicant has been at pains to make clear throughout, the subsequent LDC application specifically sought confirmation of the fact that the removal of the wall would not constitute development; it did not propose any other works at all. The question of whether or not a LDC for proposed development should be granted turns solely on whether or not the proposal would be lawful as at the date of the LDC application: other matters – such as the planning merits of the proposal, or the intention of the developer to then go on and carry out other unspecified works – are not relevant.
5. In determining the LDC application, the Council took the view that the works involving removal of the wall (the subject of the LDC application) and the works involving the laying out of the parking space (the subject of a separate

application for planning permission) were “inextricably linked”. The Council’s Statement of Case explains that it concluded “the actual works to be carried out go beyond the works specified in the application”, and it would not be appropriate to separate them.

6. As addressed in the case law relied upon by the Council<sup>1</sup>, that would usually be the correct approach when faced with two or more applications for planning permission concerning development at the same site. But an LDC application for proposed development is very different to an application for planning permission. It simply asks the hypothetical (albeit often rather loaded) question: would the works here described be lawful? It is not open to the decision-maker to imply any additional works into the terms of the description.
7. I therefore find that the Council acted unreasonably in having regard to other irrelevant considerations, rather than determining the LDC application solely on the basis of the works described in the application form.
8. However, that is not the end of the matter. An award of costs is only justified if the unreasonable behaviour is the cause of unnecessary or wasted expense. In this case, determining the LDC application solely on the basis of the works described therein also leads (as in my appeal decision) to its refusal. This is because the proposed works to the wall constitute alteration, rather than demolition, and so it is the 1977 Article 4 Direction which is determinative rather than the 2014 Direction.
9. In summary, the Council refused to issue an LDC on the basis of an incorrect approach, but adopting the correct approach would also have lead to its refusal. That being so, the Appellant’s costs in bringing the appeal cannot be attributed directly to the Council’s unreasonable behaviour, because the LDC application would still have been refused if that unreasonable behaviour had not taken place.

### **Conclusion**

10. I find that while the Council behaved unreasonably, that behaviour did not result in “unnecessary or wasted expense” as described in the PPG, and so an award of costs is not justified.

*Jessica Graham*

INSPECTOR

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<sup>1</sup> *Singh v SSCLG and Sandwell BC* [2010] EWHC 1621 (Admin); *Sage v SSETR* [2003] 1 WLR 983