



Costs Decision

Site visit made on 8 June 2021

by C Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date:

Costs application in relation to Appeal Ref: APP/D0840/W/21/3267490 Land Adj to No 46, Gurnick Road, Newlyn TR18 5DG

- 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 Chris Burt 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 a dwellinghouse and a garage.
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Decision

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

Reasons

2. Although the Council failed to determine the application, the planning committee has indicated that the proposal would have been refused on the basis that it would overlook Rosevean. The appellant argues that the Council's actions were unreasonable because the appeal proposal is not substantially different from the previously approved planning permission¹ on the same site. I have been referred to paragraph 049 of the PPG² which says that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted.
3. There are similarities between the appeal proposal and the approved scheme and this is acknowledged in the Council's Appeal Statement. The main difference is the introduction of additional glazing on the roof, including a dormer window which would face Rosevean. It seems to me that this is a material departure from the approved scheme and it was reasonable for the Council to consider the potential for overlooking.
4. In their Appeal Statement, the Council points out that the proposed dormer window would serve the main living room where future occupiers are likely to spend long periods of time. It is further argued that the separation distance between Rosevean and the proposed dormer window would be inadequate, leading to unacceptable overlooking. While I do not find the Council's case with regard to this matter particularly convincing, its position has nonetheless been justified. I am also mindful that the harm that may arise through overlooking is matter of planning judgement and the committee was entitled to take its own view on this matter (even though the recommendation in the committee report was to allow the proposal).

¹ Council Ref: PA18/06395.

² Planning Practice Guidance, Ministry of Housing Communities & Local Government, November 2016.

5. I have dealt with another appeal³ for an alternative dwelling on the site. Although this dwelling would also have upper floor windows facing Rosevean, the Council did not raise any concerns about overlooking in that particular case (the scheme was instead refused on the basis of character and appearance). While I recognise the appellant's point regarding inconsistencies, the dwelling in that case was of a different design and the Council has been able to justify its stance in the current appeal for the reasons set out above.
6. I am informed that the Council made no request to extend the determination time of this appeal and gave no assurances as to when the case would be dealt with. However, while these delays prompted the appellant to trigger the appeal process, the outcome of the committee meeting indicates that the application would have been refused even if the Council had determined it within time. Hence the appeal would not have been avoided.
7. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. This is not an example of the behaviour described in paragraph 049 of the PPG.

C Cresswell

INSPECTOR

³ Appeal Decision: APP/D0840/W/21/3267140