
Costs Decisions

Site visit made on 30 June 2021

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2021

Costs application A in relation to Appeal Ref: APP/D0840/W/21/3270993 15 Polkirt Hill, Mevagissey PL26 6UR

- 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 Dr. Frits Sutmoller for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of the demolition of structurally unsafe dwelling and construction of new dwelling to same footprint.
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Costs application B in relation to Appeal Ref: APP/D0840/W/21/3270993 15 Polkirt Hill, Mevagissey PL26 6UR

- 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 Cornwall Council for a full award of costs against Dr. Frits Sutmoller.
 - The appeal was against the refusal of the demolition of structurally unsafe dwelling and construction of new dwelling to same footprint.
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Decision

1. Costs application A for an award of costs is refused. Costs application B for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded where a party has acted unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Costs application A

3. The appellant's application for costs relies to a substantial extent on how the Council reached its view that the development proposed should be refused and that they delayed development which in the appellants view should clearly have been permitted. The appellant is of the view that the main concern of the Council in coming to its decision was the disruption that would be caused to the highway network as a result of the necessary road closures to undertake the development applied for. Whilst this may have been the subject of much debate at the Planning Committee Meeting, this does not form part of the Council's reason for refusal.

4. I appreciate that the outcome of the application will have been a disappointment to the appellant. However, the Council were not unreasonable in coming to that decision from the information they had available to them. The Council's reason for refusal is substantiated by an appeal statement which makes accurate observations regarding the existing nature of the appeal property, its surroundings and relevant elements of the development plan. I similarly reasoned that the proposal should be dismissed and therefore cannot logically support the contention that the development proposal should 'clearly have been permitted'.
5. Accordingly, I do not find that the Council failed to properly evaluate the application or consider the merits of the scheme. The Council had reasonable concerns about the impact of the proposal which justified its decision.

Costs application B

6. The Council made me aware that, prior to submitting the appeal, the appellant submitted a subsequent application relating to no.15 to the Council for determination which retains all walls at ground floor level. The Council argues that the appeal should not have been made without the appellant first seeking to address the concerns of the Council, which is effectively what has been done in the second application (which proposed the retention of some historic fabric of the building).
7. However, the appellant had been served a notice under Section 77 of the Building Act 1984 in relation to the appeal property being a dangerous structure. In a letter from the Council dated 27 August 2020, the Council described it as 'posing an immediate danger to the general public' and set out the need for the appellant to remove the dangers to avoid formal action.
8. In light of this, it is not unreasonable for the appellant to have sought to explore all avenues to seek to remedy the dangers and secure a solution for the site (including appealing the Council's decision and submitting a revised application with the intention of addressing the reason for refusal). Moreover there is nothing to have prevented him from so doing; it may be the case that either scheme is a preferable undertaking to the appellant (and indeed I may have reached a different judgement to the Council).
9. Accordingly, I do not find that the submission of the appeal constitutes unreasonable behaviour which would justify an award of costs; the dispute between the main parties in respect of costs effectively boils down to different perspectives on the merits of the scheme, which is addressed in the associated appeal decision.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in either application. For this reason and having regard to all matters raised, no award of costs in relation to applications A and B are justified.

Alison Fish

INSPECTOR