



Costs Decision

Site visit made on 10 December 2021

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2022.

Costs application in relation to Appeal Ref: APP/D0840/W/21/3281746 Beach View, Trenance, Mawgan Porth, Newquay TR8 4DB

- 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 Chris and Fiona Heritage 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 demolition of existing dwelling and construction of replacement dwelling without complying with a condition attached to the planning permission given by appeal Ref APP/D0840/W/19/3224149 dated 16 July 2019 relating to planning application Ref PA18/04468.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 basis of the appellant's application for costs falls into the following areas where they feel there has been unreasonable behaviour on the part of Cornwall Council are:
 - 1) In delaying development without sound need or reason.
 - 2) Making vague, generalised or inaccurate assertions unsupported by objective analysis
 - 3) Persisting in objections to a scheme or elements of a scheme previously deemed acceptable on appeal.
 - 4) In the application resulting in unnecessary expenditure in seeking an appeal to determine the application.
 - 5) Not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (for non-determination), or an application to remove or vary one or more conditions, as part of sensible ongoing case management.

- 6) Failure to produce evidence to substantiate each reason for refusal on appeal.
4. The appellant made an appeal application against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission. The Council did not, therefore, issue a decision notice. The appellant has stated that they chose to pursue an appeal for non-determination, after negotiations with the Council, and they determined to proceed on that course on the basis of their preference for the application proposals as originally submitted.
5. Although the Council's negotiations with the appellant may have possibly delayed a decision on the application, I do not find that this delay amounts to unreasonable behaviour on the part of the council, as I find that that such a delay has no bearing on the appeal process itself, as it was the appellants own decision to pursue an appeal with the proposal unaltered.
6. The Council's concerns about the design of the replacement dwelling are well documented and well known to the appellant, however the appeal proposal is materially different to that previously approved by appeal. It is not, therefore unreasonable for the Council to have assumed knowledge of the background to their objections in their communications with the appellant during the application process for this proposal and the previous appeal process, as the areas of concern were the subject of extensive previous communication.
7. As the appeal proposal is materially different to that previously approved, I do not find that the Council have unreasonably maintained objections to a scheme or elements of a scheme previously deemed acceptable on appeal. The Council's appeal statement clearly relates their objections to the scheme, to the changes proposed, and they have set this out in detail and in a manner that I do not find to be vague, generalised or with inaccurate assertions unsupported by objective analysis.
8. I find that, although I have not agreed with the conclusion of harm to character and appearance of the local area by the Council appeal statement in my determination of the appeal, it is not unreasonable for them to come to this, given the sensitivity of the location, as acknowledged by the inspector for the scheme approved on appeal, and the extent of the proposed changes.
9. In the material before me for the purposes of the appeal and costs application, no evidence has been provided that the Council have not reviewed their case promptly as part of sensible ongoing case management. Although the appellant may not agree with the Councils decision, I find that they have behaved reasonably in maintaining their position with the regard to their conclusion that the proposal would cause the harm they identified, subsequently producing suitable evidence to substantiate each reason for refusal in their appeal statement.
10. The unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not therefore been demonstrated.

Victor Callister

INSPECTOR