



Costs Decision

Site visit made on 22 February 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Costs application in relation to Appeal Ref: APP/D0840/W/21/3282893 The Lodge, Sea View Holiday Park, Sennen, Penzance TR19 7AD

- 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 Mrs J Brownbridge for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for use of existing manager's residential unit as dwelling. Change of use.
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Decision

1. The application for costs is partly allowed in the terms set out.

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. Part of the claim for costs by the applicant has been made because the Council's Statement of Case refers to the lifting of a condition and the legal principle issue relating thereto. The applicant indicates that the Council's attempt to introduce such a fundamental legal point as a new objection at a late stage in the appeal is unreasonable.
4. As indicated in the appeal decision, the appeal application was originally validated as a s73 application to remove a condition, and was then adapted to form a standalone 'change of use' application. The reasons the Council prompted this change relates to the 'Finney'¹ judgement and how it was considered to apply at that point in time.
5. The Council's Appeals Officer has erroneously referred to the appeal application as one made under S73 and based the Statement of Case entirely on the implications of an alleged 'Finney' conflict. It is suggested that the appeal should be turned away.
6. What the Council has effectively done is focussed its Statement on a legal principle which is not strictly relevant to the 'change of use' application and has consequently missed an opportunity to explain the reasons behind its actual decision more fully than in the submitted Delegated Report. No further opportunities have been offered to the Council to rectify this error.
7. I have considered the appeal and reached findings based on the evidence before me, unaffected by the Council's suggestion to turn the appeal away. The

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council il, Energiekontor (Uk) Limited

Council's statement is plainly wrong, and whilst I anticipate that the expense incurred by the appellant addressing it is likely to be limited, it is wasted expense nonetheless.

8. The other contributing factor for the applicant's claim for costs is the lack of substantiation of the reasons for refusal, given the sole focus of the Council's statement on the legal point. The applicant highlights that it is not the Council's usual habit to rely on officer's Delegated Reports for appeal cases and the Report in this case omits some of the points raised by the appellant's evidence.
9. Whilst I consider that the reasons for refusal are adequately formed, the Delegated Report includes some incorrect references to the lifting of the condition (which was ultimately not what was being applied for following the Council's instruction). The explanations are relatively brief in relation to both reasons, but, on balance, are considered to adequately substantiate them.
10. Accordingly, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs, relating specifically to addressing the Council's Statement and costs rebuttal, is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cornwall Council shall pay to Mrs J Brownbridge, the costs of the appeal proceedings as described above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hollie Nicholls

INSPECTOR