
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/21/3282279 Little Hendra, Boskerris Road, Carbis Bay TR26 2NQ

- 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 St Clements Hill Ltd for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and redevelopment of the site to provide 7no new dwellings and 1no replacement dwelling without complying with condition 2 attached to planning permission Ref APP/D0840/W/19/3232355, dated 31 December 2019.
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Decision

1. The application for 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. The award of costs can relate to unreasonable behaviour that occurs in relation to the procedural handling of the matter, or can be of a substantive nature – relating to the merits of the proposal.
3. In this case, the applicant indicates that unreasonable behaviour has occurred because the Council's planning committee refused permission, contrary to the advice of its professional planning officer, without sufficient assessment of the proposal in the context of the extant permission¹ and the surrounding area. It is also alleged that the Council has failed to determine similar applications in a like manner as caselaw² has established is necessary for the credibility of the planning system.
4. The Council's response indicates that the Committee was not duty bound to accept the professional advice of its officers and debated the matter at length before deciding to depart from the recommendation. It is also highlighted that in terms of consistency, considerations will vary considerably between cases and over time and that the likelihood of two proposals being so similar so as to share identical considerations is very rare. Fundamentally, the Council chose to consider the appeal proposal and other cited cases on the basis of their own individual merits.

¹ APP/D0840/W/19/3232355, dated 31 December 2019

² Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137

5. The scheme which the applicant alleges is very similar in design, scale and appearance seeks to add another storey of accommodation to five dwellings in the widest, rearward part of the site. Whilst the previous scheme was considered to be relatively 'low level', the appeal scheme would result in a material change when viewed from a range of public and private viewpoints. It would differ from the dwelling that previously existed in terms of siting and massing and to a greater extent than the extant scheme. Whilst, on balance, I have found the additional scale and bulk would result in a scheme that would assimilate with the area and avoid additional harm, it is clearly not so similar to the extant permission so as to be a foregone conclusion.
6. Whilst I understand the applicant's frustrations at the duration and outcome of the process given the timescales involved and supporting information prepared to promote the scheme, I agree with the Council that the Committee was entitled to reach its own conclusions on the particular merits of the case, where an alternative case could be made. In respect of effects on the character and appearance of an area, there is clearly a degree of subjectivity that explains the alternative view reached by the Committee with the benefit of the members' collective local knowledge. I also share the view that despite some similarities and precedent schemes with three storeys of accommodation, that the appeal scheme is not so similar to the appeal proposal that would enable it to be considered in a precisely 'like' manner.
7. I note the speculation that there has been undue influence over the process by elected members. This is not clear from the evidence, but it is apparent that a large number of local residents felt that the proposal would detrimentally affect the local character and the living conditions of those living closest to the site. That a thorough examination of such potential effects was sought by the case officer, locally elected members and neighbouring residents is unsurprising and does not lead me to believe that unreasonable behaviour has occurred.
8. Taking all factors into account, it does not appear that the costs application relates to any unreasonable behaviour by the Council in relation to the substance or its handling of the appeal application or appeal itself, and nor does it appear to me that an award of costs would be justified in either regard.

Conclusion

9. For the reasons set out above, the award of costs is therefore refused.

Hollie Nicholls

INSPECTOR