



Costs Decision

Site visit made on 14 April 2022

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Costs application in relation to Appeal Ref: APP/D0840/W/21/3286974 78 Carn Brea Lane, Pool TR15 3DS

- 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 Ian Moore, Tescan Ltd, for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for Demolition of single detached dwelling and replacement with student accommodation.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 applicant considers that the Council, by determining the planning application without considering the fallback position with respect to demolition via permitted development rights, acted unreasonably by preventing or delaying development which should clearly have been permitted and not following well-established case law.
3. The applicant's appeal statement puts forward a fallback scenario relating to demolition of the property under permitted development rights and presents case law to support the scenario being considered a significant material consideration. However, the planning application specifically sought planning permission for the proposed demolition as well as a replacement building and the evidence before me indicates that the fallback scenario was not raised by the applicant until after the Council determined the planning application.
4. Accordingly, irrespective of whether the Council was (or should have been) aware of the ability to demolish buildings under permitted development rights, its decision on the planning application cannot reasonably be described as unreasonable simply because it did not consider one of potentially umpteen possible fallback scenarios. It seems to me that it is also not the job of the Council to consider all possible theoretical entitlements that an applicant has neither themselves raised nor indicated an intention to use.
5. Setting out the reason for refusal, the Decision Notice is complete, precise, specific and relevant to the development proposed. It also details the alleged harm and planning policies that the Council considers the development conflicts with, while the Officer Report concludes by weighing up various considerations.

Accordingly, it is clear why the Council refused the planning application and its decision does not appear to conflict with the planning legislative framework.

6. The case of Zurich Assurance presented by the applicant with the appeal confirms that a fallback scenario can be a material consideration and should be given due consideration. Although I have come to a different position to the Council on the likelihood of the fallback scenario occurring and gave it significant weight in my planning balance, the Council's appeal statement does refer to the fallback scenario presented as part of the appeal. This includes stating that it is feasible but also highlighting two notional means by which the the building's demolition under permitted development rights could be prevented. Accordingly, the Council's appeal submission clearly considered the fallback position and presented reasons why it should not be taken into account. Although the Council did not specifically refer to the Zurich case and the applicant may disagree with the Council's position on the subject, this does not mean that it failed to sufficiently consider the fallback and that its stance was unreasonable. In relation to this, it is also relevant that the PPG is clear that it is for the decision maker to decide what weight is to be given to the material considerations in each case.
7. Although I have come to a different overall conclusion to the Council and have allowed the appeal, this does not mean that it acted unreasonably in refusing the planning application. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR