



Costs Decision

Site visit made on 20 April 2022

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Costs application in relation to Appeal Ref: APP/D0840/W/21/3288228 39 Lower Penggon, Camborne TR14 7UJ

- 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 Kevin Voller for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of two flats.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 Council has suggested that the existing dwelling should be regarded as a non-designated heritage asset (NDHA), even though it is not identified on any local list, historic environment record or similar. The PPG indicates that exceptionally, NDHAs could be identified through the planning application process although the example given in the PPG relates to archaeological sites.
4. Neither the types of assets that can be identified at application stage, nor the process by which NDHAs are identified, are closed lists. The Council, in its officer report, has explained that in considering the existing dwelling to be an NDHA, it has agreed with the position of the World Heritage Site (WHS) office, not simply adopted its position unquestioningly. The WHS office's opinion is supported by reasons. Although, on the basis of the evidence before me, I have not found the dwelling to be an NDHA, I, therefore, find that the Council has not behaved unreasonably in reaching this conclusion.
5. The appellant has evidently gone to great lengths to address the Council's concerns following pre-application advice and the withdrawal of an earlier application. He has produced evidence, including a Heritage Statement. While there is no overt analysis of this statement in the officer report, the statement does not disassociate the site with the historic mine workings that are part of the WHS, and there is no particular evidence that the Council did not consider its contents.

6. Moreover, considering all of the evidence, including the Heritage Statement, I have found that the site does contribute, albeit in a small way, to the significance of the WHS and the potential for demolition does not alter that. In connection with the harm alleged in respect of the effect on the WHS, then, I find that the Council has not behaved unreasonably.
7. The second reason for refusal related to a lack of information in respect of surface water drainage. In its consultation response, the Lead Local Flood Authority (LLFA), had indicated that percolation tests, a drainage layout and soakaway calculations were required. Before the appeal was lodged, these tests were carried out and considered by the LLFA. It was further suggested by the LLFA that it should be proven that no connection to the surface water sewer could be made.
8. The appellant's flood risk assessment had already set out why this had not been proposed. However, in accepting at appeal stage that soakaways could be used, the LLFA and Council appear to have relied upon the additional information and percolation tests. Their response to the appellant indicates that such tests had been sought previously in case connection to the sewer was not possible. As such, their acceptance of soakaways as an appropriate means of drainage and ultimate suggestion, at appeal stage, that a condition could be imposed, was not wholly reliant upon information provided with the application.
9. Although conditions had been imposed on a previous planning permission relating to drainage, that related to an extension to an existing dwelling where there may have been an expectation that existing systems would be used. That is not, therefore, comparable to the current appeal proposal that proposes additional dwellings. Overall, I find that the evidence indicates that it was not certain at application stage that a suitable surface water drainage scheme could be achieved and I, therefore, find that the Council did not behave unreasonably in refusing permission for this reason.
10. With regard to the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for an award of costs is refused.

M Bale

INSPECTOR