



Costs Decision

Site visit made on 8 November 2022

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Costs application in relation to Appeal Ref: APP/D0840/W/22/3292995 Lamburn Cottage, Penhallow, Truro, Cornwall TR4 9LS

- 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 Ms Ashleigh Molton for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for *'Change of use of first floor studio apartment from a workshop to residential and holiday use. No physical alterations proposed and there will be no additional floor space created. The reason for the change of use is to allow elderly family members to reside in the apartment so they can be cared for by the family members in the main dwelling house due to old age and poor health. Until the family members reside in the apartment on a permanent basis, holiday letting of the apartment will allow for the additional income to the upkeep of the listed building'*.
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Decision

1. The application is refused.

Reasons

1. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
2. The applicant contends that the Council has behaved unreasonably in assessing the proposal as a dwelling not an annexe. The Council did not consider the prospect of a condition securing the status of the apartment as an annexe. It is also stated that the Council has incorrectly applied housing policies and the 'special justification' test in assessing the holiday let. It has been inconsistent as it has recently permitted new dwellings in the vicinity. The Council has not acknowledged the prospect of travel to Perranzabuloe by the public footpath.
3. There can be cases, as a matter of fact and degree, where a proposed annexe would convey such a level of independence from the main house that it would operate in practice as a dwelling. Furthermore, in this case, the development description directs the Council that what is being applied for is the 'change of use to residential and holiday use'. It describes the proposal as an 'apartment' more than once and refers to permanent residential occupation. It contains no reference to an annexe. Decision makers must be led by descriptions of development to ascertain what is being applied for and it is therefore quite understandable that the officer report made the assessment that it did.
4. As such and given that I share the Council's concerns in this case, the Council was not unreasonable to assess the scheme as a dwelling before and during

the appeal. The prospect of a condition addressing this issue was also examined, albeit briefly, in the Council's appeal statement. It follows that the Council were also correct to consider the proposal as a whole against the CLP's housing policies including Policy 7. The Council did consider the prospect of residents using the public footpath to Perranzabuloe in its appeal statement and has given adequate reasons why this was not considered reliable.

5. In my view however, there is inconsistency in the Council permitting dwellings on sites close by and then refusing the appeal scheme on the basis that Lambourne is not considered a settlement. I am mindful that the PPG provides that not determining similar cases in a consistent manner could represent a reason for a substantive award of costs. That said, the applicant has not gone on to explain how the Council's inconsistency has led to unnecessary expense in the appeal process. Whereas those previous decisions appear to be light on reasoning, the Council set out sufficiently detailed reasons during the appeal as to why Lambourne is not to be classified as a settlement under the terms of the CLP, and I have ultimately agreed.
6. Consequently, on the evidence before me, the Council's conduct does not constitute unreasonable behaviour that has resulted in unnecessary or wasted expense in the appeal process, as described in the PPG. An award of costs is therefore not justified.

Matthew Jones
INSPECTOR