
Costs Decision

Site visit made on 23 January 2023

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Costs application in relation to Appeal Ref: APP/D0840/W/21/3273908 Tresloe Vean, Perrancombe, Perranporth, Cornwall, TR6 0HY.

- 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 R Barteau for a full award of costs against Cornwall Council (the LPA).
 - The appeal was against the refusal of planning permission for the construction of two detached infill dwellings, formation of two new vehicle access points onto Perrancombe and alterations to existing vehicular access.
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Decision

1. The application is refused.

Reasons

2. The Government's Planning Practice Guidance advises that parties in planning appeals normally meet their own expenses. However, costs may be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.
4. Local planning authorities are not bound to accept the recommendations made by their officers. However, they will be at risk of an award of costs where they fail to produce evidence to substantiate reasons for refusal or provide vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The LPA's reason for refusal includes reference to policy 12 of its adopted Local Plan. This relates to design considerations. A narrow interpretation of design could be restricted to the architectural merits of a proposal. The LPA raised no such concerns regarding this element of the proposed development. However, as provided for within policy 12, design is multi-faceted. Amongst other things, this policy includes a requirement for development proposals to maintain and enhance the distinctive natural and historic character of Cornwall. The layout must also be appropriate and respect the natural environment.
6. It is clear from the LPA's concerns, as set out within its reason for refusal and subsequent appeal submissions, that in identifying the harm that it had, it was both logical and correct to then cite a conflict with the provisions of policy 12.

I have found within my appeal decision that the layout of the proposed buildings would not respect the natural (sylvan) qualities of the appeal site and also go on to identify conflict with policy 12.

7. The LPA did not act unreasonably in its approach to policy 12 and did not cause the applicant to incur any unnecessary or wasted expense. A full award of costs would not therefore be justified.
8. There is no cogent evidence to support the applicant's argument that the LPA failed to comprehend the basis of the Tree Preservation Order (TPO). The LPA had received detailed advice from its tree / forestry officer, who was experienced in handling tree-related matters, including TPOs. I reached a similar conclusion to the LPA and its tree / forestry officer on the likely impact of the development upon trees growing within the site and the implications for the quality of the local environment. There is also nothing of substance to indicate the LPA failed to weigh the harm that it had identified against the benefit of providing additional housing. The LPA did not act unreasonably in reaching a different conclusion to its planning officer or the applicant's consultants when assessing the planning merits of the proposals.
9. The proposed development would result in a loss of trees (including canopy) and woodland habitat. By itself, this would have a harmful impact upon biodiversity. Nevertheless, this must be weighed with the proposed planting arrangements, provisions for wildlife and the intended management regime for the site. When this exercise is undertaken, there is evidence, including the advice of the LPA's Ecologist, to indicate that there could be a modest net gain in biodiversity.
10. However, the LPA also, quite properly, took into account the advice of its tree / forestry officer who is very familiar with the role that trees play in providing a habitat to a diverse range of species. This officer set this out in their consultation response and also alerted members to the possibility of future pressure to undertake works to trees that it was intended to retain within the site. It was not therefore unreasonable for the LPA to find that when this was also taken into account the 'biodiversity balance' tipped against an approval.
11. Even if the LPA acted unreasonably on the matter of biodiversity, as noted within the applicant's Statement of Case (SoC), this was linked to other matters identified by the applicant. The SoC does not contain any new or additional evidence / reports in respect of biodiversity. Given the findings of the reports that were previously submitted on behalf by the applicant and the policy context, biodiversity was inevitably going to be something upon which the applicant would wish to touch upon / comment at appeal stage. The applicant did not incur unnecessary or wasted expense in responding to the LPA's concerns in respect of biodiversity.

Conclusion

12. Given all of the above, the LPA did not act unreasonably and cause the appellant to incur unnecessary or wasted expense.

Neil Pope

Inspector