
Costs Decision

Site visit made on 21 March 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3308201 Oaklea, Nanterrow, Lower Tregongeeves, Polgooth, Cornwall PL26 7AX

- 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 Paul Furse for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for alterations to single storey garage and barn into 2 bedroom accommodation.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. The applicant considers that the Council acted unreasonably by preventing and delaying the development that should have been permitted, not following well-established case law, and not determining decisions in a consistent manner. Costs in this instance are being applied for on substantive grounds.
3. In response, the Council state that the other decisions referenced pre-date when the St Mewan Neighbourhood Plan (NP) was 'made', that the decision has been made in accordance with the policies in the NP and Cornwall Local Plan Strategic Policies 2010-2030 (LP), and that they have fully justified the decision in accordance with case law.
4. Since the Council considered the original development of five dwellings on the adjoining site in 2017, the NP has been 'Made'. As a result of this, the Council considered the appeal proposal on the basis that there had been a change in planning policy and material considerations that justified their decision. However, the appeal site falls outside of the NP area, and as a result the NP carried no weight.
5. The PPG advises behaviour that may give rise to a substantive award of costs includes preventing or delaying development which should clearly be permitted, not following well-established case law, and not determining similar cases in a consistent manner. Through reliance upon policies within the NP that carry no weight in relation to the planning application, the Council have relied on an irrelevant matter and not determined the application in accordance with the

development plan as required by legislation. The reliance on the NP subsequently led to the Council failing to justify why this proposal does not meet the criteria to part 3 of Policy 3 of the LP.

6. Although I have also found in the appellant's favour in relation to their being no harm to the character and appearance of the area, the Council have put forward reasoned evidence in relation to the proposal allegedly failing to maintain the rural character of the immediate area. The evidence in relation to this adequately justifies their case in relation to this matter and the second reason for refusal.
7. However, in light of the flawed application of planning policy, the applicants have incurred unnecessary expense in relation to the matters covered in the first reason for refusal. That is unreasonable and has led to unnecessary and wasted expense in relation to this matter.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cornwall Council shall pay to Mr Paul Furse, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to the first reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Rose

INSPECTOR