



Costs Decision

Site visit made on 6 June 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

Costs application in relation to Appeal Ref: APP/D0840/D/22/3310599 The Garden House, The Parade, Mousehole, Cornwall TR19 6PP

- 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 & Mrs K Allerfeldt for a partial award of costs against Cornwall Council.
- The appeal was against the refusal of planning permission for enlargement of existing opening to allow off road vehicle parking.

Decision

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

Reasons

2. The applicant submits that the Council have had no regard to evidence, including an Arboricultural Impact Assessment (AIA) and Design Access and Heritage Statement (DAS) submitted to them by the applicants at the time of the planning application, or through a visual inspection, in relation to the effect of the proposal on trees.
3. Parties in planning appeals normally meet their own expenses. However, 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.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. Furthermore, Paragraph 038 of the PPG states that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case.
6. The Council's third reason for refusal relates to damage to the roots of an Acacia tree, and the resulting detrimental impact to visual amenity within the Mousehole Conservation Area. The Council's report notes a consultation response from the Forestry Officer, which whilst repeating a response to an earlier planning application (which the applicant states did not include an AIA), also notes that there is no material difference in terms of arboricultural impact to the previous application. The consultation response also refers to the site being re-visited by the Forestry Officer during the period of determination of the planning application the subject of the appeal.

7. The tree constraints plan associated with the AIA suggests removal of the Acacia tree. Furthermore, both the DAS as well as the AIA clearly highlight the poor health of this tree and limited life expectancy, with the AIA stating '*This tree is declining with large parts of the canopy dead and is likely to die completely within a few years*'.
8. The PPG states that when assessing amenity value of a tree, a number of factors should be taken into account, including the future potential as an amenity. While it appears the site was re-visited, the Council report makes no reference to the health or life expectancy of the tree. Although it is reasonable for the Council to come to a differing view on findings on the effect of the proposal on the tree, this must be supported by objective analysis based on all the information that was before them at the time.
9. Given that this matter was highlighted by the applicant in both the DAS and AIA, such a lack of objective analysis given the evidence before the Council at the time is unreasonable. This has resulted in the Applicant incurring unnecessary and wasted expense addressing the third reason for refusal.
10. A partial award of costs is therefore warranted.

Costs Order

11. 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 & Mrs Allerfeldt the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in adducing evidence specifically related to the defence connected to the Council's third reason for refusal.
12. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Harrington

INSPECTOR