



## Costs Decision

Site visit made on 12 June 2023

**by R E Jones BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 July 2023**

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**Costs application in relation to Appeal Ref: APP/D0840/W/22/3306608  
Menagissey Vean, Road from Oakdene to Kenmere, Menagissey,  
Mount Hawke, TR4 8DQ**

- 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 Tamsin Melville for a full award of costs against Cornwall Council.
  - The appeal was against the refusal of planning permission for the construction of new dwelling with off-road parking and garden amenity within domestic curtilage.
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### Decision

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

### Reasons

2. 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.
3. The appellant case essentially relates to the Council's failure to substantiate their reasons for refusal or give consideration to policies in the development plan or other material considerations. There are also claims that the Council made inaccurate assertions about the proposal's impact.
4. In its first refusal reason the Council refers to the site being within the countryside and clearly divorced from any defined settlement. The officer report substantiates this by describing the shape and arrangement of the built form in Menagissey and in their judgement it would not relate to a settlement. They have clearly reasoned their position while having regard to the terms of Local Plan Policy 3 including relevant information in the supporting text. In coming to this finding, there was no need to assess whether or not the scheme was infill, rounding-off or previously developed land as informed by Policy 3 and the Chief Officer Advice Note on those matters. They have also substantiated their judgment on this matter with details of other appeal decisions where Inspectors found sites to be outside settlements. The appellant has done the same, but in respect of cases that support its view that the appeal site is within a settlement. It is not irrational that the Council has not carried out a detailed analysis of the appeal cases submitted by the appellant, as they do not support her findings. Accordingly, I have found no unreasonable behaviour on this point.
5. The appellant highlights the Council's failure to consider Policy 7 of the Neighbourhood Plan. However, the criteria of that policy require schemes to be within settlements, therefore based on the Council's findings an assessment of

the scheme against its terms would not have been necessary. Similarly, an assessment of the appeal site's proximity to services and facilities in larger villages and towns was not required. The Council have followed the assessment requirements laid out in the development plan and in this respect, I have not found any unreasonable behaviour.

6. The Council found harm in the proposal's effect on the setting of the grade II listed Menagissey Vene, based on its unsympathetic modern design and use of materials. Although I have come to a different view, the Council's finding is reasonable given the relative distance between the proposal and the listed building, as well as the differences in appearance. Their finding on the issue has also involved a degree of subjectivity, which can, as in this case, lead to opposing views between parties. Despite forming a different judgement, the Council have not been unreasonable in doing so. It also found that the harm to the setting of the listed building would not be outweighed by public benefits.
7. The Council has conceded in its appeal statement that the level of harm to the setting of the listed building is "less than substantial" rather than "substantial" as indicated in the officer report. This would not, in my view, have altered the Council's decision or the subsequent appeal. The appellant's case focuses on there being no harm to the listed building, therefore, the change in the Council's conclusions would not have required any significant changes in the appellant's assessment of the issue and consequently any wasted or unnecessary expense in preparing the appeal.
8. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. The appellant had to address those concerns and the evidence of third parties in any event. Furthermore, having assessed the evidence submitted by the appellant in addressing the Council's reasonable concerns, I do not consider that unnecessary expense was incurred on the Appellant.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*RE Jones*

INSPECTOR