



Costs Decisions

Site visit made on 24 July 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Costs application in relation to Appeal A Ref: APP/D0840/W/22/3302494 Swallows Reach, St. Veep, Lostwithiel, PL22 0PA

- 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 Monica Watson for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the retention of change of use of land to allow siting of shepherds hut for use as holiday accommodation.
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Costs application in relation to Appeal B Ref: APP/D0840/W/22/3302496 Swallows Reach, St. Veep, Lostwithiel, PL22 0PA

- 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 Monica Watson for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the construction of extension to existing building to create holiday accommodation.
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Costs application in relation to Appeal C Ref: APP/D0840/W/22/3302498 Swallows Reach, St. Veep, Lostwithiel, PL22 0PA

- 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 Monica Watson for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the change of use of existing annex to allow use as self contained holiday accommodation.
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Decisions

1. The application for an award of costs for Appeal A is refused.
2. The application for an award of costs for Appeal B is refused.
3. The application for an award of costs for Appeal C is refused.

Reasons

4. 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.

5. The PPG states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. The Applicant has submitted a single application for a full award of costs, in respect of the Council's behaviour relating to all three appeals. In this instance, the Applicant is seeking a full award of costs in relation to procedural and substantive matters.
6. The PPG includes examples of unreasonable behaviour by planning authorities that may give rise to a procedural award of costs. Amongst other things, this can include, *"delay in providing information or other failure to adhere to deadlines"*. The PPG further confirms that *"If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period"*.
7. In essence, the basis of this part of the costs claim relates to the alleged failure by the Council to co-operate during the processing of the planning applications and delay in determining them. The Applicant has put to me that the Council did not consider the planning applications with an open mind and maintains that the applications had been predetermined.
8. In terms of whether costs can be claimed for the period during the determination of planning applications, the PPG confirms that, *"Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded"*.
9. With regards to predetermination, the Applicant has referred to correspondence received from the Council's Officer after the submission of the planning applications. That correspondence from September 2021 confirms that, prior to validation, the Council conducted an initial review of the planning applications. Following that initial review, the Council informed the Applicant of the planning authority's concerns and that the planning proposals would *"conflict with Policy 5 point 3 in that it is not a recognised tourism facility and not readily accessible may a range of transport modes"*. The Officer's correspondence then concludes that, given the policy concerns, it was *"likely to lead to a recommendation of refusal"* and that the Applicant could seek to have the planning applications determined or that the planning applications could be closed down at that stage.
10. Further details of the abovementioned initial review of planning applications process, have been provided by the Council in their rebuttal of the Applicant's costs applications. In that respect I have been directed to the Council's website information regarding the process conducted before registration and validation and which is referred to as 'Frontscreening'.
11. Whilst I acknowledge the wording used by Officers during the abovementioned initial review, in my view such an approach was reasonable given that the process allows for identification of issues early in the process, with consideration being given to the requirements of the development plan and to

material planning considerations. Furthermore, that process allows for applicants to consider the initial issues raised by the Council and to provide additional information if they so wish to address those concerns. To my mind, the details provided do not indicate that the Council has predetermined the applications, but is rather a pragmatic response to the issues identified by planning officers.

12. In respect of the delays in determining the planning applications, having regard to the available evidence, it seems likely that planning permission would have been refused, even if the Council had determined the application within the statutory time limits. In the event that the Applicant had concerns about the time taken to determine the planning application, they could have appealed against non-determination once the application exceeded the statutory decision time. That option was not exercised in this instance.
13. Nonetheless, there does appear to have been a delay in determining the applications and for which the Applicant did not appear to have been provided with a full explanation. However, there is also nothing before me which suggests that a swifter decision by the Council would have prevented the submission of the appeal. Therefore, and whilst the whole process would have been lengthy, costly in time and understandably frustrating for the Applicant, it has not been demonstrated that this has directly led to wasted or unnecessary expense in pursuing the appeal.
14. The PPG includes examples of unreasonable behaviour by planning authorities that may give rise to a substantive award of costs. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan national policy and any other material considerations", "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis" and "and not determining similar cases in a consistent manner".
15. The Applicant maintains that all three of the proposed developments should have been clearly permitted given their accordance with the policies of the development plan and provisions of the National Planning Policy Framework (the Framework).
16. However, it will be seen from the Appeal Decisions that I have not agreed with the Applicant in those regards and that the appeal schemes would all conflict with the aims and provisions of the policies of the development plan when taken as a whole, and would fail to accord with the provisions and aims of the Framework. Whilst it is noted that the Council's Officer report did not specifically and individually refer to paragraphs 85 or 105 of the Framework, it is clear that consideration was given to the sections contained within the Framework that concern 'Building a strong, competitive economy' and 'Promoting sustainable transport' in the Council's determination of the planning applications. I therefore do not find that the Council acted unreasonably in that regard.
17. The Applicant further contends that a number of recent similar proposals approved by the Council have clear parallels with the appeal schemes in terms of distance to facilities and scale of development, and that by ignoring those other approved schemes there is a clear lack of consistency in the Council's determination of planning applications.

18. As will be seen from the Appeal Decisions, whilst I have only been provided with brief details regarding those cited cases, it appears that those approvals as referred to me by the Applicant could be distinguished from the proposed schemes that are now before me. As such and based on the evidence that is before me, it does not appear that the Council has determined similar cases in an inconsistent manner.
19. The Applicant has also put it to me that the Council has made vague assertions regarding the intensification of the use of the appeal sites in respect of holiday accommodation and that the Council gave no consideration to existing uses or the presence footpaths within the area.
20. Whilst I concur that the Officer's report was light on reasoning in this respect, it will be seen from the Appeal Decisions that I have found that given the change of use and the siting of new tourism accommodation at this location, individually or cumulatively, there would be likely to be an increase in movements to and from the sites compared to the existing positions. Furthermore, it is apparent that the Council did consider the prospect of using public footpaths, with the statement of case confirming the Council's view that use of such routes would not provide a realistic alternative to the private vehicle for accessing services and facilities within the surrounding area. For the reasons given in the Appeal Decisions, I agree with the Council's finding on that matter. Consequently, I find that the Council has not acted unreasonably in these regards.
21. Drawing the above together, in conclusion I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that, therefore, awards of costs are not justified in respect of Appeal A, Appeal B nor Appeal C.

Mr A Spencer-Peet

INSPECTOR