
Costs Decision

Site visit made on 7 November 2023

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 November 2023

Costs application in relation to Appeal Ref: APP/D0840/X/22/3307411 Carne Cottage, Zennor, St Ives, Cornwall, TR26 3BU

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Enya Zoe James for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of a Lawful Development Certificate (LDC) for the proposed extension to the rear of a dwelling; an art studio/home office/home gym; and outbuilding; a double garage, plant and store room; and a solar array panel
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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 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 seeks a full award of costs on the basis that the Council's decision making in respect of firstly, which elevation constituted the principal elevation of the dwellinghouse and secondly, that the conditions on solar permitted development rights prevented the grant of those rights.
4. The Council has made a judgement on which elevation of the dwellinghouse should be regarded as the principal elevation for the purposes of establishing whether the proposed developments are permitted development under the Town and Country Planning (General Permitted Development)(England Order 2015, as amended (the GPDO).
5. The Council's assessment is based on the similarities in the east and west elevations with a central doorway flanked by windows of the cottage. In response to the application for costs they refer to a part of the technical guidance not previously mentioned in their appeal statement. This is a reference to "where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will be need to be taken as to which of these forms the principal elevation." This appears to provide very little justification for the Council's interpretation of the GPDO but provides advice on dealing with corner plots, albeit not exclusively.
6. Whilst I recognise that that judgement is exercised in respect of the principal elevation, I find the Council's reasoning to be perverse and not based on the

facts relating to the relationship of the site, its architectural features, the access track and its curtilage. Additionally, reference is made to the positioning of historic extensions to the property implying that they were not part of the original dwellinghouse upon which much of the interpretation of Part A depends. The facts in the case do not support the Council's conclusion and I note that the appellant suggests that this conclusion has the appearance of having been determined in order to achieve the desired outcome on the application for the LDC. I will not add to this comment other than to say that the approach to the determination of an LDC application should be distinguished from the approach necessary for that of a planning application which is determined on planning merits and not on planning law and judicial authority.

7. In respect of the decision on the PV array, the Part 14 B.2 condition requires the effect on the amenity of the area to be minimised. The Council have taken the view that this would not be minimised through the proposed positioning but provide no assessment to show that there is a preferable and practical alternative position within the curtilage where amenity effects would be lessened. This superficial approach to determining the lawfulness of the proposed array falls well short of what would be considered to be reasonable.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full 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 Ms Enya Zoe James the costs of the appeal proceedings described in the heading of this decision; 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.

P N Jarratt

Inspector

