



Costs Decision

Site visit made on 31 October 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22ND MARCH 2024

**Costs application in relation to Appeal Ref: APP/D0840/C/22/3297058
Land known as the Garage, 1 Old Portreath Road, Sparnon Gate, Redruth
TR16 4JB**

- 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 Mr Kevin Fentham for a full award of costs against Cornwall Council.
 - The appeal was against an enforcement notice alleging the material change of use of part of a domestic garage to a self-contained dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant states that the issuing of the Enforcement Notice (Notice) was based on the flawed assessment made in the planning application, and that the Council did not re-assess the policy position or consider material considerations before taking action. In particular the applicant claims that the Council's policy assessment failed to consider criterion 3 of Policy 7, Policy 21 of the Cornwall Local Plan 2016 (Local Plan) or consider relevant material considerations in the planning balance.
4. I have taken it that the applicant's application for costs, in the main, rests on whether the Council has failed to have regard to its own adopted policies and other material considerations when making the decision. The PPG states that examples of unreasonable behaviour by local planning authorities includes preventing a proposal which could reasonably have been permitted in the light of the development plan and all other material considerations¹.
5. Firstly, it must be acknowledged that the appeal is not against the decision to refuse the planning application, and I am only able to consider the Council's actions in respect of the Notice. With specific regard to the policy assessment, paragraph 4 of the Notice states that the domestic garage would not enhance the immediate setting. Albeit brief, this demonstrates that prior to serving the Notice, the Council did have regard to the requirements of criterion 3 of Policy 7 of the Local Plan. The reasons for serving the Notice are also different to the reasons for refusal set out on the planning application Decision Notice. I acknowledge that

¹ Paragraph: 049 Reference ID: 16-049-20140306

Policy 21 of the Local Plan has not been referenced in the Notice. However, as the Council determined that the location was not accessible, then including Policy 21 would have not resulted in any additional reasons for serving the Notice.

6. The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR 2002) Part 2 (4) outlines that an enforcement notice issued under section 172 of the Planning Act shall specify (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
7. I consider that there were sound planning reasons for the Council's decision, based on development plan policy and other material considerations. Having regard to the Notice, the reasons for serving it are clear, precise, and relevant to the development. The policies of the Cornwall Local Plan and relevant paragraphs of the National Planning Policy Framework have also been set out in paragraph 4 of the Notice. Although material considerations may be relevant, they are not typically set out in an enforcement notice and are not required as part of the ENAR 2002.
8. The applicant also indicates that the Council's Statement of Case is vague and imprecise in its responses to the grounds of appeal. He suggests that in their response to the ground (a) appeal, the Council did not explain the harm caused by the development, despite concluding there was harm to the character and appearance of the locality. Also, he claims the Council conceded that the requirements of the Notice could be limited to certain 'materials' on the ground (f) appeal; and they failed to consider the formal action in accordance with the human rights of the occupant in ground (g). Furthermore, according to the appellant, the Council provided contradictory responses in respect of the history of the site.
9. I note the applicant's issues with the action taken and with what has been set out in the Council's Statement of Case. However, several of the matters raised are subjective planning considerations, and the Council are not being unreasonable just because their conclusion on the acceptability of the development differed from the appellant's. In this respect, the costs application is not an opportunity to revisit the disputes of the appeal. Also, no substantive evidence has been produced to demonstrate how the responses in the Statement of Case have directly caused the applicant to incur unnecessary or wasted expense in the appeal process.
10. Accordingly, the appeal could not have been avoided, and unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. I therefore conclude that a full award of costs is not justified in this case. The application should therefore be refused.

M. P. Howell

INSPECTOR