



Costs Decision

Site visit made on 5 December 2023

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Costs application in relation to Appeal Ref: APP/D0840/W/23/3321556 "Boslowen", Land east of Tala Park, Tala Hill, Boyton, Launceston PL15 9RJ

- 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 and Mrs Hooper for a full award of costs against Cornwall Council (the Council).
 - The appeal was against the refusal of planning permission for the change of use from agricultural land to residential, construct one self/custom-build low carbon detached dormer bungalow with detached garage and associated landscaping.
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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 applicants submit that the Council has acted unreasonably in that it has failed to correctly apply development plan policy. They also submit that, as they consider Boyton Parish Council's vote to be procedurally flawed, the Council has acted unreasonably in so far as it has failed in its responsibilities to procedurally support the Parish Council. Had it done so, the applicants suggest, the vote may have been different, and this may have had an effect on the outcome of the Council's original decision. PPG gives further advice as to when local planning authorities will be at risk of an award being made against them. The examples listed as unreasonable behaviour on substantive grounds include preventing development which should clearly be permitted having regard to its accordance with the development plan and any other material considerations.
4. The Council's Officer Report (OR) and reason for refusal set out the policies that the Council relied on within its decision, both of which include Policy 21 of the Cornwall Local Plan: Strategic Policies 2010 - 2030 (the Local Plan). The Council also sets out an assessment of the proposal and how this would conflict or accord with relevant development plan policies. The OR only refers to one aspect of Policy 21, in so far as it relates to the loss of agricultural land (subsection d). The Council's appeal statement subsequently expands the application of Policy 21 to include considerations in respect of previously developed land (subsection a). The Council's evidence in the appeal does not explicitly refer to subsection c. of the Policy which supports an increase in

building density where appropriate, taking into account the character of the surrounding area. I have found this element of the policy to be determinative to the appeal, and the Council has therefore acted unreasonably in failing to consider the development against the whole policy.

5. However, an award of costs can only be made if unreasonable behaviour leads to unnecessary or wasted expense, and I do not believe that to be the case here. The Council did not feel able to grant permission, with substantive reasoning being provided, and it has been necessary therefore, for this matter to be decided through the appeal process. Notwithstanding my comments in relation to the Council's analysis against Policy 21, the decision reason provides sufficient evidence for the applicant to be clear on the Council's main concerns for the submission of the appeal, including the effect of the proposal on the character of the surrounding area. Therefore, had the Council referred to Policy 21 in its entirety, the arguments advanced by it indicate that the application would still clearly have been refused. As such, the appeal would still likely have been lodged. The applicant has therefore not incurred any unnecessary expense.
6. There may have been failings in the Parish Council's procedures in respect of registering interests, and the Council evidently has a role to play in ensuring these procedures are followed. However, the appeals process is not the place to address these issues, and in respect of its determination of this appeal, I do not find unreasonable behaviour on the part of the Council in this regard.
7. I accept that Parish Council comments can raise material considerations in planning decisions, and that in certain areas, including Cornwall, Parish Council voting can influence processes for 'calling-in' applications to be determined at planning committees. Nevertheless, the submitted minutes do not indicate that there was significant support for the scheme, or that the Parish Council were otherwise minded to request the application be decided by the Council's planning committee. Moreover, I do not find that the Council gave undue weight to the Parish Council's objection. Even if the outcome of the Parish Council vote had been different, the comments raised by other interested parties and the Council officer's objective analysis of the proposal against the relevant development plan policy would very likely have resulted in the same outcome.
8. Taking all of the above into account, although I find that the Council has exhibited unreasonable behaviour in respect of its documented analysis of Policy 21 of the Local Plan, this has not resulted in the applicant incurring unnecessary or wasted expense. I have found that the appeal has been necessary and given my findings in the appeal decision, in considering all relevant material considerations the Council has not prevented development that should have been permitted. The application for costs is therefore refused.

K Jones

INSPECTOR