
Costs Decision

Site visit made on 14 May 2024

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2024

Costs application in relation to Appeal Ref: APP/D0840/W/23/3326109 Greenacres, Trevenen Bal, Cornwall, Helston TR13 0PP

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Lobb for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for extension of time application for the erection of a detached pool house without complying with condition 9 attached to planning permission Ref PA11/03413.
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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 (the PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
3. The PPG¹ provides examples of behaviours that risk an award of costs, including, amongst others: failing to produce evidence to substantiate each reason for refusal on appeal; acting contrary to, or not following, well-established case law; and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant contends that the Council has acted unreasonably by refusing the application for reasons that are contrary to, and do not follow, well-established case law. In particular, the appellant asserts that the Council acted contrary to the case law of *Armstrong v Secretary of State*² by refusing the application due to the proposed significant changes and/or material differences from the original permission being outside the scope of s73 of the Act.
5. In *Armstrong v Secretary of State*, the Court held that there is nothing in the legislation that limits a s73 application to minor material amendments, or to amendments which do not involve a fundamental variation, provided there is no conflict with the operative part of the original permission. Whilst the refusal reason references the material differences between the application proposals

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

² *Armstrong v Secretary of State for Levelling-Up, Housing and Communities* [2023] EWHC 176 (Admin)

and the original permission, it does not address whether there is conflict with the operative part of the 2011 permission.

6. The Council's Appeal Statement incoherently references the PPG guidance regarding 'what constitutes a non-material amendment', concluding that, 'the changes to the development are material and would require the express grant of a fresh planning permission.' The confusing case of the Council is continued in their Costs Rebuttal where it is advised, 'The Council consider that the details are material amendments and the most appropriate way of resolving this would be by the submission of an application seeking a new permission for the development as carried out and not using s73 to fundamentally alter the planning permission'.
7. The applicant clearly set out their grounds of appeal within their statement, including reference to pertinent case law. It was imperative, therefore, for the Council to clearly demonstrate how their decision was consistent with the provisions of *Armstrong v Secretary of State*. The Council's refusal reason and subsequent appeal submissions have failed to do so in a coherent manner. The current proposals accord with the broad description of the 2011 permission as a detached pool house. Consequently, the Council have behaved unreasonably in acting contrary to, and not following, well-established case law.
8. Furthermore, regarding whether the 2011 permission was lawfully commenced, the Council failed to provide any substantive evidence to contradict the appellants' evidence, or to otherwise make the appellants' version of events less than probable. S56 sets an objective test and the Council failed to produce evidence to substantiate its refusal reason in relation to this issue.
9. Overall, therefore, I find that unreasonable behaviour has been clearly demonstrated by the Council and this has caused the applicant unnecessary expense in the appeal process.

Costs Order

10. 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 Mr and Mrs Lobb the costs of the appeal proceedings described in the heading of this decision; with such costs to be assessed in the Senior Courts Costs Office if not agreed.

S D Castle

INSPECTOR