



Costs Decision

Site visit made on 16 July 2024

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

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Costs application in relation to Appeal Ref: APP/D0840/W/23/3328316 Boquio Vean Crelly, Trenear, Helston, TR13 0EX

- 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 S Truen for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the change of use to camping, erection of reception plus toilet/shower block, access improvements, laying of aggregate hard standing without complying with a condition attached to planning permission Ref: PA21/08492, dated 17 May 2022.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. As noted within the Appeal Decision, the disputed condition, which provides that approval of a scheme to secure mitigation of the additional recreational pressures to the Fal and Helford Special Area of Conservation together with an appropriate mechanism to secure delivery of the mitigation, was imposed on planning permission reference: PA21/08492 as a pre-commencement condition.
4. In respect of when Local Planning Authorities must agree pre-commencement conditions with an applicant for planning permission before imposing them, the PPG advises that "*Section 100ZA(5) of the Town and Country Planning Act 1990 provides that planning permission for the development of land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition*", except for under certain circumstances that do not apply in this instance. The PPG goes on to advise that "*A local planning authority may decide to serve a notice if it has not been able to obtain written agreement, to a pre-commencement condition it wishes to impose, during the course of negotiations*".
5. On procedural grounds, the Applicant has highlighted that they questioned the wording and need for such a condition and that, subsequently, the Council did not obtain the Appellant's acceptance of the pre-commencement condition as required under the relevant regulations.
6. Whilst I note that the development at the site was overturned at Planning Committee such that the Council's Officer recommendation was for refusal and

Members decided to approve the development, that does not absolve the Council of its requirements with regards to such pre-commencement conditions to be agreed with the Applicant prior to consent being issued. In my view, the Council has acted unreasonably given its failure to follow those requirements. Furthermore, I consider that if the requirements with regards to the pre-commencement condition was followed by the Council in this instance, then it would have not been necessary for the Applicant to have submitted the appeal. Consequently, I also conclude that the Applicant has incurred unnecessary expense in the appeal process.

7. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

8. 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 S Truen, 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.

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.

Mr A Spencer-Peet

INSPECTOR