



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: 27 August 2024

Costs application in relation to Appeal Ref: APP/D0840/W/23/3333661 Viaduct Works, Frog Hill, Ponsanooth, Cornwall, TR3 7JW

- 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 J Cox for a full award of costs against Cornwall Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the Demolition of Redundant Industrial Building, Dwelling and Small-Scale Mixed Business Units and Construction of 13 no. Mixed Use Business Units Including 1 no. Live/Work Unit.
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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. The PPG states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Applicants are seeking an award of costs in relation to substantive matters.
4. The PPG includes examples of unreasonable behaviour by planning authorities that may give rise to a substantive award of costs. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan national policy and any other material considerations".
5. The Applicants maintain that the Council had all the necessary information to demonstrate that the proposed development should be granted, and that the Council was therefore unreasonable in failing to determine the application within the required period. It has been put to me that, consequently, the Applicants were put to the cost of lodging an appeal against non-determination.
6. In response to the appeal against non-determination, the Council confirmed that the proposed development complied with a number of policies of the development plan, but that the failure to secure a financial contribution towards the public consultation for a Traffic Regulation Order (TRO) in respect of a 40mph speed limit on Frog Hill, meant that the scheme would fail to provide safe and suitable access for users. The Council then suggested that, in

the event that the appeal was allowed, a condition should be imposed that restricted the use of the site until the TRO had been "*promoted*" by the Local Highway Authority.

7. It is noted that the Applicants questioned the need for a TRO during the application process given the submission of details contained within a Transport Statement and sought an explanation of why such a TRO would be required. Based on the evidence that is before me, it does not appear that the Council provided any substantive explanation or justification for the TRO.
8. For the reasons given in the Appeal Decision, and notwithstanding my concerns regarding the wording used in the suggested condition, based on the evidence and submissions before me I have concluded that it has not been demonstrated why a TRO, or indeed the need for a public consultation on a TRO, would be necessary to make the development acceptable in planning terms. As such, I found that no such mitigation is necessary and therefore it would not be necessary to impose a planning condition requiring that the development not be brought into use until such time as a TRO has been promoted by the Local Highway Authority.
9. In summary of this matter, it appears from the evidence before me that the Council advised the Applicants that a contribution towards a public consultation for a TRO would be necessary and suggested a planning condition in that regard. The Applicants, having submitted a Transport Statement in support of the application, questioned the need for the TRO, requesting that the Council provided an explanation and justification for such a condition. No substantive explanation or justification for the TRO appears to have been provided to the Applicants and it appears that the Council had all the necessary information in order to determine the application. Despite a number of requests from the Applicants, the Council failed to determine the application, with the delay resulting in the need for the Applicants to submit an appeal.
10. As such, and in light of the conclusions reached in the Appeal Decision, I conclude that the Council prevented or delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.
11. 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

12. 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 J Cox, 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