



Costs Decision

Site visit made on 12 November 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2024

Costs application in relation to Appeal Ref: APP/D0840/W/24/3343448 Land rear 12 Enys Road, Camborne TR14 8TN

- 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 T Michell for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for replacement garage with workshop.
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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 (the 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 gives examples of the type of behaviour that may give rise to a substantive award against a local planning authority¹. The application cites six of these examples where it is contended that the Council acted unreasonably, as follows:
 - 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;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or

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

the issues to be considered being narrowed, thus reducing the expense associated with the appeal; and,

- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.
4. On the first issue, the Council's refusal was based on its conclusion that the proposal did not accord with development plan policy. This involved a degree of subjective judgment and the weighing of material considerations. The fact that I decided differently does not automatically mean that the Council's refusal unreasonably delayed the development. A consideration of the other issues is required to determine whether this was the case.
 5. On the second issue, the Council produced a Statement of Case, which comprehensively set out a justification for its decision. Whilst I found differently, the Council did give a full explanation for its conclusion that the proposal would result in conflict with the development plan. I am therefore satisfied that there was a sufficient substantiation of the reason for refusal.
 6. The third and sixth issues are related to the claim that the Council failed to recognise ownership of the site had already been subdivided from the original host dwelling, so the proposal would not result in the severance of the historic curtilage. I have some sympathy with the applicant on this issue, as the application clearly identified the site with a red line, excluding the house. The evidence² indicates that this was queried by the Council and clarified by the applicant prior to determination of the application. The position was again made clear in the applicant's Planning Appeal Statement. Whilst the Council acknowledged the ownership situation at paragraph 5.12 of its Statement of Case, it still referred to the WHS Officer's concern about the plot subdivision in the following paragraph. The Council was entitled to take the advice of its consultee into account, but should have done so critically, in the light of the existing plot severance.
 7. It would have been unreasonable, in the face of the evidence available at the time, if the Council's refusal had centred on the plot subdivision, and if it had subsequently defended the appeal on this basis. However, the Council's reason for refusal does not cite the subdivision of the plot. Rather, it refers to the design, size, scale and proportions of the proposed building, and the resultant impact on the character and appearance of the street scene. The decision, and the resultant need for the appeal, did not, therefore, hinge on a failure to understand or accept that the plot severance had already taken place, or to review its position when this fact was clarified. The Council's actions in this regard have not, therefore, resulted in unnecessary or wasted expense in the appeal process.
 8. On the fourth issue, it is argued that the application could have been permitted with the condition suggested by the Council in its Statement of Case. However, a condition limiting the use of the building would not have overcome the Council's concern regarding its design, size, scale, and proportions. I have already found that the Council provided sufficient substantiation of its reason for refusal on this basis. It was not, therefore, unreasonable for the Council to conclude that its concerns were not capable of being dealt with by conditions.

² Appendix J to the applicant's Planning Appeal Statement.

9. On the fifth issue, the applicant was willing to discuss amendments to the proposal, with a view to avoiding an appeal. It is contended that the Council refused to enter into pre-application discussions. However, the evidence indicates that the Council has a procedure and charging schedule for pre-application discussions, and that the applicant was unwilling to take this route. The Council's expectation that its adopted and advertised procedure should be followed does not amount to a refusal to enter into pre-application discussions. The Council did not act unreasonably in this respect.
10. Overall, therefore, the Council exercised its duty to determine the application in a reasonable manner. Its refusal was based on a subjective interpretation of development plan policies. Whilst I came to a different conclusion, the Council did not unreasonably prevent or delay development which should clearly have been permitted.
11. Therefore, unreasonable behaviour resulting in unnecessary, or wasted expense has not occurred, and an award of costs is not warranted.

Nick Davies

INSPECTOR