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## Costs Decision

Site visit made on 20 June 2017

**by Thomas Bristow BA MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3<sup>rd</sup> August 2017**

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### **Costs application in relation to Appeal Ref: APP/Z0835/W/16/3166073 Land at White Cottage, Pothloo, St. Mary's, Isles of Scilly TR21 0NF**

- 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 Eric Hicks for a full award of costs against the Council of the Isles of Scilly.
  - The appeal was against the refusal of planning permission for development described on the application form as the 'demolition of 2 bedroomed chalet & erection of 2 bedroomed cottage'.
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### **Decision**

1. The application for a full award of costs is refused.

### **Reasons**

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') explains that costs may only 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.<sup>1</sup>
3. The appellant's case for a full award of costs is that the development proposed should have been permitted.<sup>2</sup> Specifically the appellant contends that the Council failed to substantiate their opposition to the development proposed with reference to the provisions of policy 3 'Housing' of the Isles of Scilly Local Plan adopted originally in November 2005.
4. The appeal was against the Council's refusal to grant permission for the demolition of an existing chalet within the appeal site, the lawful use of which is residential with no occupancy restrictions, and the erection of a dwelling. The appellant's central contention was that the dwelling proposed represented a replacement to the existing chalet rather than a new dwelling, and that policy 3 of the Local Plan is not applicable to replacement dwellings.
5. As set out in the appeal decision paragraph 27 of the Local Plan supporting policy 3 establishes that the policy applies to 'any new housing'. However in the absence of a specific definition of new housing in the Local Plan or the National Planning Policy Framework (the 'Framework'), or reference to replacement

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<sup>1</sup> Reference ID: 16-030-20140306.

<sup>2</sup> With regard to Guidance Reference ID: 16-049-20140306.

dwellings, it is a legitimate matter of planning judgement as to which term most accurately describes the nature of development proposed.

6. Whilst I have reached a different position to the Council on this matter, that the appropriate application of policy 3 of the Local Plan is a matter of planning judgement is acknowledged in appeal Ref APP/Z0835/A/10/2120334 which the appellant has brought to my attention (paragraph 26 of that decision in particular). I further note in the appeal decision to which this costs application relates that a Local Plan cannot legitimately be expected to address every development scenario that may arise.
7. Furthermore the Council have set out in the officer report associated with application Ref P/16/084/FUL and in their statement of case at appeal the various factors that they considered in reaching a judgement as to whether the development proposed would represent a new dwelling, including the size and location of the dwelling proposed relative to the existing chalet.
8. In the Council's statement of case in particular detailed consideration is given to the harm that the Council consider would arise with reference to the demographic and housing market context relevant to policy 3 of the Local Plan. Given the detailed consideration that the Council have given to the development proposed and its relationship to the Local Plan, my decision in respect of the appeal does not indicate that the Council's approach was unreasonable but rather that of the balance of the evidence before me I reached a different overall conclusion regarding the acceptability of the development proposed.
9. For the above reasons, and having taken account of all other matters raised, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Accordingly, and with reference to the approach in the Guidance, an award of costs is not justified in this instance.

*Thomas Bristow*

INSPECTOR