



## Costs Decision

Site visit made on 3 July 2019

**by Mrs H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> July 2019

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### **Costs application in relation to Appeal Ref: APP/Z0835/W/19/3225058 Men-A-Vaur, Church Road, Hugh Town, St Mary's TR21 0NA**

- 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 Andrew Sellack for a partial award of costs against the Council of The Isles of Scilly.
  - The appeal was against the refusal of planning permission for construction of residential property for holiday letting purposes, specifically designed to enable occupation of groups including mobility impaired guests, incorporating ground floor wet room ensuite bedroom accommodation and level access to all ground floor and garden areas.
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### **Decision**

1. The application for costs is refused.

### **Reasons**

2. The Planning Practice Guidance 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 applicant claims that the Council has acted unreasonably in relation to the substance of the second reason for refusal, claiming that the reason and supporting evidence is vague, generalised or inaccurate and that planning permission should not have been refused on grounds capable of being dealt with by condition. It is also claimed that the Council has not determined similar cases in a consistent manner.
4. Insofar as it relates to biodiversity, the reason for refusal is sufficiently clear. The evidence in this regard is not vague or generalised and sufficiently clarifies that members had concerns about the loss of habitat, sufficient to warrant refusal of permission contrary to the advice of officers.
5. The matter of biodiversity may be capable of being addressed by condition but usually where a biodiversity survey has been submitted as part of an application to ensure that any recommended mitigation measures are implemented. This allows a more robust assessment of the baseline conditions in relation to which the impacts can be predicted. In this case, none was submitted. I have indicated that a precautionary approach is necessary in this case, given the potential, however small, that the proposal may have an effect on protected species and also to ensure that the enhancement to the biodiversity value can be realistically achieved.
6. Any reference to other proposals on other sites with their own site-specific features and biodiversity interests does not provide sufficient justification for reaching an alternative conclusion in this case. It is over simplistic to rely on

- the assumption that both sites are of 'similar likely ecological significance' and that a condition will achieve the necessary protections and enhancements.
7. The appellant claims that the third reason for refusal is also vague and generalised. I consider that it is slightly ambiguous and appears to refer to two different harms; one to the living conditions of neighbouring occupiers with particular regard to noise and disturbance, and the other to the practical use of the access for service vehicles.
  8. The Council's Statement of Case refers to the amenity impacts that may arise from the use of the access path which I have addressed accordingly in my decision. The reference to service vehicles is explained in the Council's Statement as relating to the issue of emergency service vehicles, and in particular, to vehicles used by Cornwall Fire and Rescue in the event of a fire.
  9. Not all parts of the proposal would achieve the required 45 metre distance from a vehicular access suitable for a pumping appliance as specified in the response of Cornwall Fire and Rescue. However, I consider that this is an issue that is also addressed by other relevant legislation and should not be determinative in the appeal. However, at least to the extent that the reason for refusal referred to the potential effects on living conditions of neighbouring occupiers, it was necessary for the appellant to address this facet of the Council's case in any event.
  10. Consequently, based on the information before me, there is no evidence that demonstrates that the Council have behaved unreasonably, either substantively or procedurally, in relation to its consideration and determination of the planning application or handling of the appeal.
  11. For these reasons, and having regard to all other matters raised, a partial award of costs is therefore not justified.

*Hollie Nicholls*

INSPECTOR