
Costs Decision

Site visit made on 20 September 2016

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 1 November 2016

Costs application in relation to Appeal Ref: APP/D0840/W/16/3146313 Part of Motha Farm, Carey Park Road, Polperro, Looe, Cornwall PL13 2JE

- 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 Cornwall Council for a full award of costs against Mr J K Shaw.
 - The appeal was against the refusal of planning permission for outline application for affordable and open market housing, 20 units in total.
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Decision

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

Reasons

2. 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 applicant's principle ground for an award of costs was based as there had been a previous appeal¹ relating to the appeal site determined in October 2015, and although the latest appeal scheme was smaller, at 20 dwellings rather than 50, there had been no material change in circumstance which would have led to the appeal being allowed, and as such it was put to the unnecessary expense of defending the appeal.
4. In the previous appeal there was agreement between the parties that the earlier scheme represented 'major development' in the Area of Outstanding Natural Beauty (AONB) and consequently the appellant needed to show that there were exceptional circumstances that would lead to the appeal being allowed.
5. In the current scheme the appellant considered the proposal no longer to be major development, and given that there is no definition of this set out in the National Planning Policy Framework (the Framework) or the PPG, this, of itself, was not an unreasonable position to take.
6. The appeal site covered a large open area within the AONB. In the earlier appeal the Inspector concluded, in paragraph 21, that the introduction of built development into an otherwise undeveloped field in a prominent position when

¹ APP/D0840/W/15/322862

viewed from certain viewpoints to the east, would adversely affect the character and appearance of the area and adversely affect the AONB and its scenic beauty. In making this conclusion it mattered not whether the proposal was 'major' or not.

7. The reality is that locating 20 dwellings on the same area would have similar effects. As I have found the Visual Appraisal was not exhaustive and the site could still be seen from public vantage points. Although the application was accompanied with an Alternative Sites Appraisal, for the reasons I have given in my appeal decision this was of little weight as it did not seek to analyse the effects of the comparative sites to take account of the great weight that needed to be given to conserving landscape and scenic beauty in the AONB.
8. The previous Inspector also found the proposed access to the earlier scheme "would also suburbanise the village approach further affecting the character of the area" (paragraph 22). There is no material difference in the latest proposal and I found it would have the same adverse effect.
9. The previous appeal was only determined relatively recently and while the Cornwall Local Plan has progressed further towards adoption, the appellant has not shown that there is anything within that plan which would lead to a different conclusion in the current appeal.
10. Given the location of the site within an AONB the conclusions of the Inspector in the previous appeal must lead to the conclusion that the current appeal had no reasonable prospect of succeeding.
11. That the Council chose not to decline to determine the application using powers under Section 70A of the Town and Country Planning Act 1990 (as amended), does not mean that it considered that the latest proposal was not 'similar' to the previous proposal as the powers to decline to determine an application are discretionary.
12. The second ground for the application was that the Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted late, causing additional expense to respond to it. However, under the guidance² set out by the Planning Inspectorate "Procedural Guide – Planning Appeals – England", any obligation should be submitted within 7 weeks of the start date. This timetable was met, and in any event the Council was not put to any additional expense to respond to it than had it been submitted earlier. In this regard there was no unreasonable behaviour.
13. However, this does not affect the main substantive reason, where I have found that the appeal had no reasonable prospect of succeeding.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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

² Appendix D.1

Mr J K Shaw shall pay to Cornwall Council, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this letter.

16. The applicant is now invited to submit to Mr J K Shaw, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R J Jackson

INSPECTOR