

Costs Decision

Hearing held and site visit made on 4 October 2016

by C J Ball DArch DCons RIBA IHBC

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

Decision date: 09 February 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3142806 Land off Tregenna Lane, Camborne TR14 7QU

- 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 Merlion Capital Developments for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for an outline application for the construction of up to 94 residential dwellings (Use Class C3) and a residential care facility comprising up to 60 bedrooms (Use Class C2).
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Decision

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

The submissions for Merlion Capital Developments

2. The application was made in writing, amplified at the hearing, and is summarised here. In refusing the application the Council prevented development that should clearly have been permitted having regard to the policy background; failed to produce evidence to substantiate the reason for refusal; made vague, generalised or inaccurate assertions about the impact of the proposal which were unsupported by any objective analysis; and had not determined similar cases in a like manner.
 3. The single reason for refusal made no reference to any development plan policy, emerging policy or SPD. It relied entirely on the National Planning Policy Framework, although the Council did not identify how the proposal conflicted with the paragraphs cited. There was no reason for refusal based on a failure to make s106 financial contributions, yet this requirement featured in the Council's consideration of the case. The Council's statement of case made no submissions on the issue of financial contributions. This was unreasonable in itself since these are matters with which the Council took issue.
 4. When the decision to refuse this application was made the Council were aware of the appeal decision (and adverse costs award) made against them 3 weeks before on a proposed housing development at Helston. The circumstances of that proposal and this one are very similar - the edge of town location, the greenfield site, the policy background, the reason for refusal. Moreover, the Helston site was further from the town centre so less sustainably located, yet was found acceptable. The reason for refusal was almost identical and the failures there which led to the award of costs also arise here.
 5. In its statement of case the Council refers to Framework 73 and 74. These were not relied on in the reason for refusal and are a new introduction. Even
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so, the Council fails to show how these paragraphs are applicable. The land is not publicly accessible open space, sports or recreational land.

6. Prior to the hearing the appellants prepared a draft statement of common ground, which included reference to housing land supply and the policy background, and was discussed with the Council. At no stage did the Council inform the appellants of the emerging housing land supply figures, and the appellants only became aware of them 2 days before the hearing. The Council must have known about the emerging changes to the assessment of the 5 year housing land supply at an earlier date yet did not inform the appellants.
7. For all these reasons the Council behaved unreasonably and caused the appellants to engage unnecessarily in the appeal process. They seek a full award of their costs.

The response by Cornwall Council

8. The Response was made in writing. In summary, while the Council's decision was contrary to the advice of its officers, members are not bound to accept their recommendations; indeed, members are often able to provide a more considered assessment due to their local knowledge. At each meeting the concerns of members are specified and noted, and it is these concerns that resulted in the grounds for refusal.
9. The Council has to justify its reason for refusal. This involved an assessment of the characteristics of the surrounding area and the effects of development. These are essentially matters of planning judgement. In its statement the Council provided detailed objective evidence based on the published Landscape Character Analysis in support of how their conclusions were reached on the substantive matter at issue.
10. The statement addresses the reason for refusal and provides a detailed specific assessment of the issues involved. It has regard to the social and economic benefits of the proposal but judges that the effects on landscape character are not outweighed by the benefits.
11. The development at Helston proposed 340 dwellings so the 2 cases are distinguishable, if only in terms of scale. In any event, each application is to be considered on its own merits.
12. The Council considers that it has justified its position in its submission having regard to government guidance and other material considerations. It has exercised its development control responsibilities responsibly and has demonstrated that a logical and reasoned justification has been made in reasonable defence of its position. It provided the housing land supply figures as soon as it was able.

Final comments from Merlion Capital Developments

13. The Council asserts that it has given detailed evidence on landscape issues. This is addressed in paragraphs 5.2 - 5.5 of its statement. None of the matters raised appear to have been justified in any of the records of meetings or discussions and were not supported by the Council's officers. These post-decision considerations are clearly insufficient to justify the reason for refusal.

Reasons

14. National Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.
15. When the application was considered, the examination of the emerging Cornwall Local Plan had been suspended, so there was no local development plan in force, and the Council acknowledged that it could not demonstrate a 5 year supply of deliverable housing land. In these circumstances Framework 14 is engaged. This means that the Council should grant planning permission for the development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. In assessing the landscape impact, the Council's officers, noting the lack of any landscape designation and the semi-rural nature of the surroundings, concluded that a significant gap between Camborne and Penponds would remain to preserve the identity of the 2 settlements and that there would not be an adverse effect on their setting or on the character or appearance of the area. They recognised the substantial benefits of the scheme and, against that policy background, made a clear recommendation of approval, subject to completion of a s106 Agreement on appropriate financial contributions.
17. Members are not bound to accept the advice of their officers but they are expected to justify their decision on planning grounds. Members obviously disagreed with the judgement of their officers on the landscape issue. Matters of judgement can be subjective so clear planning reasons, based on objective assessment of the relevant considerations, are necessary to explain why the decision was taken contrary to the officers' considered professional advice.
18. The Council's appeal statement, while listing the Cornwall and Isles of Scilly Landscape Character Study as a material document, makes no reference to it at all in the assessment of landscape and visual issues. Unlike the appellants' LVIA, there is no explanation of how the Study relates to the site or assessment of how the development would conflict with its findings. The Council simply relies on unsupported opinion of the rural nature of the site and vague, generalised assertions about urbanisation, which are not substantiated by any detailed objective assessment.
19. While the Council referred to specific Framework paragraphs in the reason for refusal, there was no explanation in the statement as to why the proposal conflicted with these particular paragraphs. In adding gratuitous reference to Framework 73 and 74, the Council failed to recognise that these paragraphs refer to publicly accessible open space and are not relevant to this site. Furthermore, in referring me to Framework 17 and 64, which relate to design quality and standards of amenity, the Council introduced matters which are to be dealt with at reserved matters stage.
20. The Council's statement made no reference to s106 contributions although, despite not being a reason for refusal, this matter was an ongoing concern which needed to be addressed at the hearing. There, the Council was unable to show a policy basis for such contributions or why they were necessary to make the proposal acceptable in planning terms.

21. Apart from the number of houses involved, the circumstances of the Helston appeal are strikingly similar. Members should have been well aware of the reasons for rejecting a very similar reason for refusal and for allowing that appeal. That decision should have been an important material consideration in this application, in the interests of consistency. I saw no mention of it in any of the reported discussions of the Council's consideration of this application.
22. The Council were clearly aware of the work behind the monitoring of the 5 year housing land supply position and it should have been possible to inform the appellants earlier of its impending publication. This would have avoided abortive work. As it was, it was necessary to adjourn the hearing to allow the appellants the opportunity to comment on the report and to amend their evidence. Although the Local Plan subsequently progressed, and the Council was able to refer to relevant emerging policies at the hearing, this does not justify the way the Council acted in refusing the application.
23. Overall I consider that, in circumstances where there was an enhanced presumption in favour of sustainable development and it had to show that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, the Council comprehensively failed to substantiate its case with objective evidence.
24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

25. 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 Merlion Capital Developments 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.
26. 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.

Colin Ball

Inspector

DOCUMENTS SUBMITTED

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| C1 | Appellants' written costs application. |
| C2 | Council's written response. |