

Costs Decision

Hearing held on 8 February 2017

Site visit made on 8 February 2017

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 6th March 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3149570 Turbary, Goonpiper, Feock, Truro TR3 6RA

- 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 & Mrs Toby and Lucy Frostwick.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a single dwellinghouse.
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Decision

1. The application for an award of costs is refused.

The submissions for Cornwall Council.

2. The costs application was submitted in writing. The following additional points were made orally.
3. Following the applicants' response the Council stated that with regard to Paragraph 53 of the Planning Practice Guidance (PPG), the Council consider the proposal is contrary to CLP Policy 7 and to National Planning Policy Framework (Framework) paragraph 55 in that the proposal would result in a new dwelling in the countryside with no over-riding justification.

The response by Mr and Mrs Toby and Lucy Frostwick

4. The response was made orally at the Hearing.
 5. The relevant paragraph is 53 of the PPG. The premise of the Council's application is that this was an unreasonable appeal that had no reasonable prospect of succeeding. Paragraph 53 says this may occur when development is clearly not in accordance with the development plan. At the point the appeal was made it was not in accordance with the development plan. However Paragraph 53 recognises that other material planning considerations such as national planning policy may be advanced that indicate the decision should have been made otherwise than in accordance with the development plan. Where other material considerations are advanced, costs may be awarded where there is inadequate supporting evidence.
 6. The appeal was made at a time when the Council accepted they could not demonstrate a five year supply of housing land and therefore there was clearly a material consideration advanced that indicated permission should be given.
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As the appeal has progressed the Council has claimed to have a five year supply but evidence has been submitted that it does not and that is not an unreasonable position to take. Most recently, following the adoption of the Cornwall Local Plan, the policies with which the development conflicts have been removed and the development is in conformity with the development plan.

Reasons

7. 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.
8. It is clear from the Officer's report on the planning application that the Council was unable to reach a conclusion as to whether it could demonstrate a five year housing land supply. However, the Council took this into account and weighed it against the harm that was identified in terms of the sustainability of the site location and the harm which would be caused by further development within a countryside location set within the Cornwall Area of Outstanding Natural Beauty. The Council found the proposal to be in conflict with the Carrick District Local Plan which was the development plan at the time of determination of the planning application. I note that the appellants accept this is the case.
9. In view of the uncertainty regarding the housing land supply, I find that it was not unreasonable for the appellants to challenge the judgement made by the Council in refusing planning permission. Between the submission of the appeal and the hearing date, the CLP had been adopted and the Council had updated its housing land supply position. Nevertheless, the appellants produced evidence at the hearing to support its case that the Council's calculation of housing land supply was flawed, that the site is accessible to facilities and services, and that there would be no harm to the countryside and the AONB.
10. The issues of whether the site is accessible to facilities and services and the effect on the character and appearance of the countryside and AONB are matters for judgement. It is where harm is found that the proposal conflicts with the policies of the CLP. Whilst I have found in my decision on the appeal that the proposal is in conflict with the CLP and with National policy, I consider that the appellants were entitled to challenge the judgement of the Council in these respects. Whilst my findings indicate my view that planning permission should not be granted even if there was a shortfall in housing land supply, the issue of housing land supply was a legitimate matter for the appellants to pursue.
11. For these reasons I find that the right to appeal was exercised in a reasonable manner and the evidence submitted was not inadequate.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated.

J E Tempest

INSPECTOR