
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 Mr & Mrs Toby and Lucy Frostwick for a full award of costs against Cornwall Council.
 - 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 Mr and Mrs Toby and Lucy Frostwick

2. The costs application was submitted in writing. The following additional points were made orally.
3. The Council sent some evidence but no justification for their position on housing land supply. Since October, the Council have put in a small statement and submitted their Housing Land Supply document of September 2016 (submitted November). The applicants were not aware this had been submitted by the Council to the Planning Inspectorate.
4. There is no evidence that the Council have assessed the impact on landscape and character. A professional statement was submitted but the Council do not refer to it and have not carried out their own assessment. No officer has been onto the site. The Council maintain there is harm to the AONB and given the significance of National Policy could be expected to substantiate their position. Instead they rely on refusing the proposal and leaving this up to the Inspector. This is unreasonable behaviour.
5. The first two pages of the Council's written response to the application for costs are irrelevant to the costs application. The Council's approach to the planning balance in the appeal does not follow that set out in the 'Cheshire East'¹ case as the Council concludes the site is not sustainable before carrying out the necessary planning balance.
6. Feock is clearly a greater distance from services but development was and still would be considered acceptable by this Council. This undermines the Council's

¹ *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC* [2016] Civ 168

case. The Council acted unreasonably at the application stage by preventing or delaying development which should clearly be permitted in regard to National Policy and other material considerations, having had no five year housing supply at that stage. Now at the appeal stage they still seek to prevent development which accords with the development plan.

The response by Cornwall Council

7. The Council response was made in writing. The following additional points were made orally.
8. The Council have provided an expert witness to explain the methodology behind the five year housing land supply issue and the evidence provided fully justifies the Council's position.
9. With regard to the impact on the landscape, especially within the AONB, this is ultimately a matter of planning judgment and is addressed in paragraphs 5.1.4 and 5.1.7 of the appeal statement and has been expanded on at the Hearing in terms of identifying from what vantage points the proposal would have an adverse impact on the character of the AONB.
10. With regard to the 'Cheshire East' case this still requires a planning balance to be undertaken and the Council consider that the unsustainable location of the dwelling is over-riding.

Reasons

11. The Planning Practice Guidance (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. The PPG also advises that parties in planning appeals and other planning proceedings normally meet their own expenses.
12. At the time the application was determined by the Council on 11 March 2016, the Council was unable to conclude whether or not it could demonstrate a five year supply of housing land. In the report by the Officer, it was accepted that the relevant saved policies of the then Local Plan were not up-to-date, and consideration was given to the test in the National Planning Policy Framework (Framework). This states that permission should be granted unless any adverse impacts of doing so would significantly and adversely outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
13. The Officer's report then went on to consider those elements of the proposal which would constitute an adverse impact. These impacts included the effect on the AONB, the location of the site outside any settlement, and accessibility from the site to services and facilities. Having considered these matters the Officer's report found that there were adverse impacts that would significantly and adversely outweigh the benefits which would arise from the provision of an additional dwelling.
14. In my view, the Council has carried out an appropriate assessment of the proposal against the test in paragraph 14 of the Framework, and used its judgement as it is entitled to do, to make its decision to refuse planning permission. There is no evidence to indicate that the Council's decision was inconsistent with its determination of other cases.

15. With regard to the evidence at the appeal hearing, the policy position was changed as a result of the adoption of the Cornwall Local Plan which provides up-to-date policies.
16. The Council updated its position on the matter of the housing land supply, and maintained the position that the appeal site is located outside any settlement in the countryside which lies within the AONB. The Council presented evidence in writing and at the hearing with regard to matters of the impact on the countryside and AONB, commensurate with the scale of the development proposed. The Council also presented evidence with regard to the location of the development. In respect of the housing land supply, housing monitoring reports including a site specific housing trajectory and the approach to assessing delivery rates on larger sites were submitted.
17. Although the applicants submitted detailed evidence relating to landscape and visual impact, there was no requirement for the Council to respond with detailed submissions of its own. The Council relied on the assessment made at the time of the application and did not resile from its view that the development would cause harm to the character and appearance of the countryside and AONB.
18. Although the applicants do not agree with the Council's position on housing land supply, it is clear from the decision taken at the time of the planning application that the Council would refuse the proposal even if there was a shortfall in housing land supply. These are matters of judgement on which the Council is entitled to take a view. It cannot be expected to answer every detail of the substantial submission made on behalf of the applicants. Since the Council's position in respect of impact on the countryside and AONB and lack of sustainability of the location remained unchanged from the decision made on the application, the lack of agreement on housing land supply is not an impediment to that position.
19. The decision to revise the appeal procedure from written representations to a hearing did not arise from a request from the Council and therefore the Council cannot be held responsible for any additional costs incurred by the applicants.
20. I am satisfied that the Council has not behaved unreasonably in refusing the application and did not prevent or delay development which should clearly have been permitted. I therefore find the appeal could not have been avoided. At the appeal stages, the Council has provided sufficient evidence to substantiate its position in relation to the reasons for refusing the application in the updated context of the CLP adopted in November 2016.
21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application for a full or in the alternative a partial award of costs is therefore refused.

J E Tempest

INSPECTOR