

Costs Decision

Site visit made on 24 January 2017

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 24 March 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3158823 Land at Elmsleigh Care Home, St Andrews Road, Par, Cornwall PL24 2LX

- 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 G Thomas for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of outline planning permission for erection of up to 10 age restricted dwellings together with amenity areas and associated open space and infrastructure.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. In this case the application is both a procedural and substantive claim.
 3. The appellant maintains that the Council did not follow the correct approach for decision making by relying on the emerging Cornwall Local Plan in its reasons for refusal. Although the Restormel Borough Council Local Plan was the statutory development plan when the application was originally determined by the Council, the reasons for refusal within the Decision Notice only cited conflict with the policies of the emerging Cornwall Local Plan. However, read in conjunction with the Officer Report, it is made very clear why the Council considered the emerging Cornwall Local Plan to carry more weight in the decision making process at that particular time.
 4. The Officer Report contains comments from the Council's Affordable Housing team (page 5). This indicates that the site lies outside the adopted settlement boundary and housing would need to be affordable in order to comply with Policy 75 of the Restormel Borough Council Local Plan. The Officer assesses the proposal against Policy 75 later within the report (page 11) and concludes that it would not be compliant. It is therefore made clear why the proposal was not considered to accord with the Restormel Borough Council Local Plan.
 5. It is likely that the application would therefore have been refused, even if the Decision Notice was framed around the Restormel Borough Council Local Plan. Furthermore, the main thrust of the reasons for refusal (that the site is outside a defined settlement) would have been similar whether the application was
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assessed against the adopted or emerging plan. Overall, the reasons for refusal were clear enough and there is little to suggest that this matter led to additional expense.

6. The Decision Notice quotes both Policies 3 and 9 of the Cornwall Local Plan. The appellant argues that Policy 9 is incorrectly applied as the application was not made on the basis that it was for a rural exception site. Policy 3 permits housing in named locations as well as permitting infill development. It also references Policy 9, indicating that rural exceptions schemes may also be acceptable. The approach taken by the Council in their evidence was to firstly decide whether the scheme amounts to 'infill' before moving on to assess whether the proposal could be justified under Policy 9 as a rural exception site. This is an entirely reasonable approach, and there is little evidence before me to suggest that it has caused the appellant unnecessary expense during the course of the appeal process.
7. It is alleged that the Council failed to take into account the appeal decisions quoted by the appellant. However, the Council makes specific reference to this matter in Section 7 of their Statement. A clear explanation is given of why the circumstances of those appeals are not considered to be applicable to the current proposal. The same section of the Council's Statement addresses planning application PA16/04796. Reasons are also provided as to why the circumstances of that case are considered to be different to those of the appeal proposal.
8. I note the appellant's arguments that the information provided by the Council contained inaccuracies. Particular reference is made to the walking distances to shops and facilities that were quoted. However, actual walking distances clearly vary depending on exactly which route is followed. Indeed, the appellant's own evidence showed some variation in the quoted distances.
9. The appellant argues that the Council failed to take into account government guidance, including paragraph 47 of the National Planning Policy Framework and the policy of significantly boosting housing supply. However, the Council provide evidence of a five year housing supply to demonstrate that the development plan is up to date. Statistical evidence was provided to support this claim even if the appellant disagrees with it. An overall conclusion is also reached to determine whether the proposal is sustainable development.
10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Colin Cresswell

INSPECTOR