
Costs Decision

Site visit made on 20 March 2017

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 12 April 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3163868 Falmouth School, Trescobeas Road, Falmouth TR11 4LH

- The application is made under the Town and Country Planning Act 1990, sections 73, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Wallis of Falmouth School for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the for construction of new all-weather 3G sports pitches (including fencing, floodlighting, etc), new sports pavilion building (including educational and community functions), new/alterd internal access roadways, new vehicle parking areas and associated external works, without complying with conditions attached to planning permission Ref PA16/00703, dated 8 June 2016.
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Decision

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

Reasons

2. 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 expense in the appeal process.
 3. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 4. The appellant suggests that the conditions as imposed on the original planning application were unreasonable. That decision did not trigger the appeal and so is not before me. However the refusal of the application to develop the site without complying with those conditions raises the same issues and is for my consideration.
 5. The appellant produced robust technical evidence in the form of the Lighting Assessment and Environmental Noise Report which both demonstrated that the occupiers of neighbouring properties would not be adversely affected by the use of the 3G pitch and its floodlights in the hours proposed. The margin of error in the Environmental Noise Report is small, nonetheless it was unreasonable for the Council to consider that the impact on nearby residents
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would be unacceptable, contrary to the conclusions of the report, without any supportive technical evidence of their own. Similarly, it was unreasonable for the Council to suggest the development would need to be operational before the effects of extending the hours of use could be assessed, as the evidence before them clearly suggested no adverse impacts on neighbouring residents would occur.

6. Whilst I accept Members are not bound by the recommendations of their officers, they need good grounds for coming to a conflicting view. I have not been provided with any substantive evidence to support a contrary view and therefore the Council acted unreasonably.
7. I do not consider the Council introduced new arguments in their appeal statement. Rather, they merely supported the reasons for refusal and referred to the updated local policy framework.
8. Nonetheless, refusing planning permission on the grounds of an adverse effect on neighbouring residents unsupported by any objective analysis amounts to unreasonable behaviour on behalf of the Council. Furthermore the appellant has been faced with the unnecessary expense of proceeding with the appeal. Therefore I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Mr J Wallis of Falmouth School, the full costs of the appeal proceedings. The proceedings concerned the appeal more particularly described in the heading of this decision.
10. The appellant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Owen

INSPECTOR