

Costs Decision

Site visit made on 11 January 2017

by J F Powis BA (Hons) MSc MRTPI

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

Decision date: 11 May 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3152038 Land NW of Church Road, Four Lanes, Redruth, Cornwall TR16 6LT

- 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 Mike Warren for a full award of costs against Cornwall Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 5 dwellings and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
3. The applicant contends that the entire appeal could have been avoided had the Council acted reasonably in its handling of the planning application. He makes the case that the Council's behaviour justifies both a procedural and substantive award of costs against it.

Grounds for a Procedural Award

4. The applicant submits that in failing to decide the planning application within the prescribed period, the Council has delayed development and caused the applicant to incur unnecessary expense in pursuing appeal proceedings. I note that the application was validated on 30 November 2015 and remained undetermined at the date of submission of the appeal on 8 June 2016.
5. The Guidance¹ states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
6. In its response to the applicant's claim for costs, the Council states that it did not reach a decision within the relevant time limit due to the need for ongoing negotiation with the applicant in respect of details of the proposed scheme. It is apparent from the applicant's list of drawings and documents for the purposes of the appeal that a number of the originally submitted plans were

¹ Paragraph: 048 Reference ID: 16-048-20140306

revised during the course of these negotiations. The officer's report also refers to re-consultation taking place during consideration of the application on the basis of amended plans. It is clear from the submitted evidence that during this time the applicant agreed to an extension to the prescribed period for deciding the application.

7. All of these factors indicate that both parties were engaging in negotiations to amend the details of the scheme with an expectation that a mutually agreeable solution could be reached and the application approved, albeit that this was not ultimately the case. The Council has set out in its appeal submissions one main reason why permission would not have been granted had the application been determined within the relevant period and I have dealt with this in my appeal decision.
8. The Guidance is clear that if an appeal against a failure to determine an application within the prescribed period is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Whilst I do not have evidence of any unreasonable behaviour on the part of the applicant in causing or adding to the delay, I consider that the amendments to the scheme that took place during the application stage negotiations were necessary to achieve the proposal that I have ultimately found to be acceptable. As a result, I find that there were substantive reasons to justify delaying determination of the application in this case. Consequently, the Council's behaviour in this respect does not constitute unreasonable behaviour warranting a procedural award of costs against it.

Grounds for a Substantive Award

9. The applicant submits that a number of aspects of the Council's behaviour with respect to the substance of the matter under appeal have had the effect of delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
10. The Council's resolution that it was minded to refuse the application alleged material harm to the character and appearance of the site and surrounding area. The applicant contends that the Council has not provided evidence to support this position and has persisted in objections to elements of a scheme which an Inspector has previously indicated to be acceptable.
11. I note that the Council's resolution that it was minded to refuse the proposal runs contrary to the views of its officers. Members are entitled to come to a different view from their officers, provided their decision is soundly based. In this case members took the view that firstly, the proposal would lead to the loss of important public views to the north-west and secondly, that it would result in harmful coalescence between the two settlement areas of Pencoyls and Four Lanes.
12. The first of these matters is dealt with at paragraphs 10 and 11 of my appeal decision. Whilst acknowledging that members departed from the advice of its officers, there is no doubt that these are subjective matters requiring a degree of judgement. That I have arrived at a different conclusion from the Council on this point does not necessarily mean that the development should clearly have

been permitted. Having regard to paragraphs 5.4 to 5.6 of the Council's appeal statement and the previous Inspector's concerns about the effect of increasing housing density and reducing the relationship with the countryside in this location, I consider that the Council had reasonable concerns about the impact of the proposed development which justified its position in this regard.

13. Turning then to the second of these matters, which is dealt with at paragraphs 8 and 9 of my appeal decision. The previous Inspector appears to have considered these arguments and found that there was limited evidence of Pencoys being retained as a village in its own right and by implication that this particular line of argument was not persuasive. I therefore have some sympathy with the applicant, who alleges that the Council's position gave insufficient weight to that aspect of the earlier appeal decision, thereby acting contrary to, or not following, case law established by the *Powergen* case². In that case, a highway authority was found to have erred in sustaining an objection to a proposal following an Inspector's contrary finding in an appeal decision on an identical scheme.
14. I am mindful, however, that in the case before me, the nature of the proposed development had been extensively revised and as such the appeal proposal constituted a materially different scheme from that previously dismissed on appeal. In addition, the development plan context has moved on considerably in the time elapsed between the two applications. As such, there were some significantly different circumstances between the case subject to the previous Inspector's 2015 decision and the appeal proposal. The Council's position explicitly took account of the previous Inspector's decision and was supported by some logical reasoning, as demonstrated in its appeal submissions. Given these circumstances, and on the balance of evidence before me, I find that the Council was not acting unreasonably in arriving at this view on the new scheme.

Conclusions

15. Paragraph 16 of my appeal decision concludes that the proposal would not cause unacceptable harm to the character and appearance of the area. I have therefore found that, having regard to its accordance with the development plan, national policy and other material considerations, the development should be permitted. Notwithstanding this, I have not found compelling evidence that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in this case. The application for an award of costs must therefore fail.

J F Powis

INSPECTOR

² *Powergen Plc, R (on the application of) v Warwickshire County Council* [1997] EWCA Civ 2280 (31 July 1997)