
Costs Decision

Site visit made on 3 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 26th May 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3163814 Land between Foxhaven and Meadow View, Eastcott, Morwenstow, Bude EX23 9PL

- 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 Miss Natalie Harrison.
 - The appeal was against the refusal of planning permission for a proposed sustainable dwelling on the land between Foxhaven and Meadow View providing an affordable home for Miss Natalie Harrison.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) section 'Appeals' advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
 3. An award of costs is sought on substantive grounds. Summarised, the Council's case is that the proposal was clearly contrary to Development Plan and national policy and the appellant did not advance any evidence to suggest otherwise. Consequently, the Council regards submission of the appeal as unreasonable behaviour. This has resulted in the Council incurring wasted costs in defending the appeal. Whilst having had the opportunity to respond to the costs application, the appellant has chosen not to do so.
 4. Paragraph 053 of the PPG sets out when an appellant might be at risk of an award of costs on substantive grounds. A (non-exhaustive) list of examples of where the appeal has no reasonable prospect of success is provided. This includes when the development is clearly not in accordance with the Development Plan, and no other material considerations such as national policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
 5. The appeal site is located in the countryside for the purposes of the adopted Cornwall Local Plan (CLP). It is outside of any settlement where infilling would
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be acceptable, access to services and facilities would be largely dependent on the private car and there would be harm to the character and appearance of the countryside. CLP Policies 3, 7, 9 and 23 are consistent with the National Planning Policy Framework (the Framework). The CLP was adopted shortly before the appeal was made. Nevertheless, there was an opportunity for the appellant to make submissions on the CLP policies relied by the Council during the appeal process or alternatively, to withdraw the appeal.

6. Whilst the appellant regards the proposal as infilling, there was no detailed analysis undertaken against CLP Policy 3 or its supporting text. There was only a limited assessment of the accessibility of the appeal site, largely focussed on the availability of local bus services. However, the use of other modes of transport such as walking and cycling and the factors which influence modal choice were not examined. Therefore, the assessment did not stand up to an objective analysis. No detailed evidence was submitted to suggest that the proposal would satisfy the criteria in CLP Policy 7 or that any of the special circumstances listed at paragraph 55 of the Framework applied.
7. The appellant described the proposal as being sustainable and illustrative plans show an energy efficient dwelling. Even so, as the application was made in outline, this matter carries little weight. No evidence was submitted to support the claim that the proposal would provide affordable housing and there appears to have been no review undertaken against CLP Policy 9. Therefore, this matter and the appellant's wish to return to live in the area also carry little weight. Accordingly, there were no material considerations that would have provided the appellant with a sound evidential basis for concluding that the appeal should have been determined otherwise than in accordance with the CLP.
8. In order to avoid unnecessary appeals, it is important that appellants behave responsibly, by exercising their right of appeal only where there are strong grounds for doing so. In this case, a balanced and objective review of the proposal against the Development Plan and the Framework would have concluded that an appeal was almost certain to fail. However, the Council has still had to incur the costs associated with defending the appeal. Consequently, I find that the appellant's behaviour relating to the substance of the appeal has been unreasonable and that the conditions for an award of costs at paragraph 030 of the PPG have been met.

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 Miss Natalie Harrison shall pay to Cornwall Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The Council is now invited to submit to Miss Natalie Harrison, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR