
Costs Decisions

Hearing Held on 7 February 2017

Site visit made on 7 February 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 30 June 2017

Costs application 1 in relation to Appeal Ref: APP/D0840/W/16/3151726 Land adjacent to Tremayne Farm, Tremayne, Prazze an Beeble, Cornwall TR14 9PH

- 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 Daniel Mock for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline application for 3no. dwellings.
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Costs application 2 in relation to Appeal Ref: APP/D0840/W/16/3151726 Land adjacent to Tremayne Farm, Tremayne, Prazze an Beeble, Cornwall TR14 9PH

- 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 Mr Daniel Mock.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline application for 3no. dwellings.
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Decisions

1. Costs application 1 is dismissed and costs application 2 is dismissed.

Procedural Matters

2. For clarity, I refer to the applicant as the appellant in respect of application 1 and as the Council for application 2.
3. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

The submissions for Mr Daniel Mock for costs application 1

4. The principal basis for the full award is that the appeal and its associated expense was wholly unnecessary. Permission should have been granted at application stage. The appellant was only compelled to instruct an agent to submit an appeal and incur costs in this regard due to the unreasonable and disproportionate refusal of the application by the Local Planning Authority (LPA). The costs incurred in instructing GPS Ltd to submit the appeal, draft the appeal statement and final comments, attend the Hearing, and prepare five

year housing land supply evidence have been wasted as a direct result of the LPA's unreasonable behaviour.

5. This was an unnecessary appeal, as set out in paragraph 32 Ref ID:16-032-20140306, which has resulted in unnecessary and wasted costs.

The response by Cornwall Council for costs application 1

6. The fact that the application has been refused is not, in itself, an adequate basis for unreasonable behaviour. Any such claim needs to go beyond and explore whether there has been unreasonable behaviour in supporting the grounds of refusal.
7. It is suggested in the cost claim that the Council has failed to take account of the advice contained within paragraph 55 of the National Planning Policy Framework (the Framework) with regards to the provision of new dwellings in the countryside. It is noted that the appellant does not appear to dispute that the site is in the countryside but differentiates between countryside and open countryside.
8. The appellants have provided a brief summary of paragraph 55 and contend that the site is not isolated. In assessing what is meant by the phrase isolated in terms of paragraph 55 it is prudent to look at recent appeal decisions which offer an appropriate definition when seen in the context of determining applications for residential development in the countryside.
9. Whilst acknowledging that if a LPA cannot demonstrate a five-year supply of deliverable housing sites (5 year HLS) its housing policies are not up to date, this argument is not considered to be relevant in this instance given that for the reasons outlined the site is clearly not in a sustainable location.
10. The appellant has referred to the Council's unreasonable behaviour in failing to address the issue surrounding the 5 year HLS. The officer's report is clear on this point at page 9 which states that 'However the lack of a 5 year HLS is not grounds in itself to justify housing in the countryside as paragraph 6 of the Framework is clear that paragraphs 18-219 are taken as a whole to constitute what is sustainable development such that all matters need to be considered in assessing a proposal'. The Council has defended its position by providing a response to the methodology behind their assessment of the current 5 year HLS both prior to the hearing and at the hearing.

The submissions for Cornwall Council for costs application 2

11. Due to its functional isolation divorced from day to day services, the submitted scheme is clearly contrary to Cornwall Local Plan Policy 7 and more specifically to the advice contained within paragraph 55 of the Framework and the core principle in paragraph 17 to make the fullest possible use of public transport, walking and cycling.
12. This was not a reasonable appeal, paragraph 001 of Section ID: 16 clearly advising appellants to '...give consideration to the merits of the case, and whether there are strong grounds to contest the reasons for refusal of permission...'. The appellant has solely relied on the concept of physical isolation rather than functional isolation which is key in considering whether the site is sustainable in terms of the guidance contained within the Development Plan and the Framework.

The response by Mr Daniel Mock for costs application 2

13. There was no development plan at the time of decision. At the planning application stage in our appeal and still today we maintain that paragraph 14 is engaged by the absence of a 5 year HLS and that permission should be granted in light of that. We have advanced the material consideration which is the Framework. So that on the face of it, it removes any prospect of costs being awarded regardless of any merits. The application therefore we submit is a tactical one too application designed to discourage you to award costs to the appellant.
14. The only basis on which the Council advances that the appeal was unreasonable is paragraph 55 and that is based on a misunderstanding by the Council as to how the Framework, paragraph 55 in particular, is to be read.

Reasons

15. The 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 or wasted expense in the appeal process.

Costs application 1

16. The appellant makes specific reference to the Council having acknowledged, at the time of making its decision, that it did not have a 5 year HLS but did not properly consider the presumption in favour of sustainable development. It is claimed the Council failed to adequately assess and consider the appeal in terms of the balance under the fourth bullet point of paragraph 14 of the Framework. It is further claimed that the Council continued its failure to follow the Framework in this respect at the appeal stage, and, contrary to the position at application stage, considered that it could demonstrate a 5 year HLS without substantiating this.
17. The Council refers to another appeal decision Ref APP/H1705/W/15/3140579 which it claims to be comparable and the finding of my colleague that the development would be functionally isolated development in the countryside, if not physically so. I found, in my appeal decision, the site not to be suitably located for the dwellings concerned having regard to services and facilities to serve the day to day needs of prospective residents, regardless as to whether or not this could be considered as being functionally isolated. I do not therefore consider that the Council acted unreasonably in pursuing its concerns in this respect.
18. It is true that if there is not a 5 year HLS, the Council's housing supply policies should not be considered up-to-date. Therefore, under paragraph 14 of the Framework, in such circumstances, the fourth bullet point test would apply in the determination of the application/appeal. The Council clearly did not take that approach. Nevertheless, its first reason for refusal was clearly considered to be a substantive reason for refusing the application. I have no basis to consider that the Council would have come to a different conclusion had it undertaken the balancing exercise, especially given my conclusions in respect of the appeal. It is therefore unlikely that an appeal would have been avoided.

19. Furthermore, the Council has reasonably since provided evidence in support of its updated 5 year HLS position albeit that this matter remains disputed by the parties.

Costs application 2

20. Notwithstanding my conclusions in respect of the appeal decision, the appellant reasonably submitted his appeal on the basis that he considered that paragraph 14 of the Framework should be engaged in the absence of a 5 year HLS. That matter remained in dispute up to and at the Hearing. It was therefore not unreasonable for the appellant to have pursued the appeal and I am satisfied that he adequately explained the basis for doing so in his submissions.

Conclusion

21. For the above reasons, I find that the Council did not behave unreasonably in determining the application and defending its decision at the appeal and that the appellant did not behave unreasonably in making the appeal. As such, neither the appellant's costs in pursuing the appeal nor the Council's costs in responding to it were unnecessarily incurred or wasted. For these reasons, and having regard to all other matters raised, neither a full or partial award of costs is justified for either application.

Andrew Dawe

INSPECTOR