
Costs Decision

Site visit made on 20 June 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 3rd August 2017

Costs application in relation to Appeal Ref: APP/Z0835/W/17/3168678 Holy Vale Farmhouse, Holy Vale Lane, Holy Vale, St Mary's TR21 0NT

- 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 Ian Sibley for a full award of costs against the Council of the Isles of Scilly.
 - The appeal was against the refusal of planning permission for the reconfiguration of 5 existing dwellings and the conversion of outbuildings to create 3 new dwellings.
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Decision

1. The application for a full award of costs is allowed as set out below.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') explains that 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.¹
3. The appellant's case for a full award of costs is that the development proposed should have been permitted, and that the Council's case was insufficiently robust.² Specifically the appellant contends that the Council's opposition to the development proposed in application Ref P/16/060/FUL with reference to policy 3 'Housing' of the Isles of Scilly Local Plan adopted originally in November 2005 did not give appropriate consideration to other material considerations in favour of the development proposed.
4. The appeal was against the Council's refusal to grant planning permission for development which included the creation of 3 new market dwellings. Policy 3 of the Local Plan prevents 'general open market housing' on the Isles of Scilly, and operates in practice through the use of a model agreement pursuant to section 106 of the TCPA (the 'model agreement') which seeks to restrict any new housing to that which responds to individuals with a 'specific local need' or 'key workers'.
5. I explain in the appeal decision how the demographic, economic and housing market context which has informed policy 3 accords with certain aims of the National Planning Policy Framework (the 'Framework') published in March

¹ Reference ID: 16-030-20140306.

² With regard to Guidance Reference ID: 16-049-20140306.

2012, namely that local circumstances should be taken into account and that local planning authorities should seek to create sustainable communities. As such I determined that policy 3 has moderate weight in the present.³

6. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, and therefore the weight accorded to other material considerations is a matter of planning judgement. However in my view the Council have failed to demonstrate how they have taken appropriate account of several material considerations in maintaining their opposition to the development proposed.
7. The Council's Housing Growth Plan dated May 2014 (the 'HGP') and Strategic Housing Market Assessment dated 2016 (the 'SHMA') are referenced by the Council in their appeal statement. However there is no substantive recognition given by the Council at appeal to the evidence within these documents illustrating that needs exist on the islands for market homes. Thus the Council's own evidence conflicts with the inflexible approach in policy 3 of the Local Plan.
8. Moreover the HGP in particular refers to the change of emphasis in the Framework compared to the policy context in which the Local Plan was established, i.e. that the Framework emphasises that local planning authorities should seek to meet objectively assessed needs for market and affordable housing. In this context the benefits of the development proposed in respect of housing provision, and other associated social and economic benefits, are given little consideration by the Council.
9. The Council set out in their response to the appellant's costs claim that: 'the LPA would agree that there is currently no demonstration of a five year supply of housing land to support a continued use of Policy 3, as set out in the Council's statement, by virtue of the significant number of important designations, including being within an AONB, it is not considered appropriate, relevant or necessary for the Isles of Scilly to set such a figure.'
10. In itself this position conflicts with the statement made in paragraph 6.18 of the Council's statement of case at appeal, that the Council contend 'an emerging 5 year supply exists' pursuant to the approach in paragraph 47 of the National Planning Policy Framework (the 'Framework').
11. Moreover the requirements of paragraph 47 of the Framework, including that local planning authorities maintain a five year land supply of deliverable sites relative to needs, is not disapplied in respect of certain authorities. The Framework equally does not specify that the requirements of paragraph 47 may be obviated by defining the entirety of a local planning authority's administrative area as one to which rural exception site policy applies (outwith examination of a development plan document, which has not occurred here).
12. Furthermore, the Council do not object to the effects of the development proposed in the appeal in relation to the character or appearance of the area.⁴

³ With regard to paragraph 215 of the Framework.

⁴ Including with regard to relevant designations (Conservation Area, Area of Outstanding Natural Beauty and Heritage Coast).

13. This point is significant but not recognised as such by the Council. It demonstrates that there are certain types of housing development which would not affect the historic or landscape character of the islands. Accordingly the Council's position in respect of the development proposed in this regard conflicts with the Council's justification for seeking in general terms to restrict housing provision.
14. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified. Whilst the appellant has not precisely enumerated the costs that he has incurred at appeal, the Guidance specifies that this may include the time spent by appellants in preparing for an appeal,⁵ and clearly some time has been expended in this respect.

Costs Order

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 the Council of the Isles of Scilly shall pay to Mr Ian Sibley 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.

The applicant is now invited to submit to the Council of the Isles of Scilly, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Bristow

INSPECTOR

⁵ Guidance Reference ID: 16-032-20140306.