



Costs Decision

Site visit made on 9 August 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 11 September 2017

Costs application in relation to Appeal Ref: APP/D0840/W/17/3171099 Land at Fore Street, Barripper, Camborne TQ14 0QR

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Poltair Housing Ltd. for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for development described on the application form as 'residential development comprising a cross subsidy scheme for 20 dwellings (10 affordable and 10 open market) together with access, estate roads and landscaping.'
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out 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 Costs applications may relate to events before the appeal was brought.²
3. The appellant's case for a full award of costs is in relation to three substantive inter-related arguments: that the Council failed to articulate clearly and precisely their reasons for refusing application Ref PA16/09196, the subject of the associated appeal,³ introduced extraneous considerations at appeal stage,⁴ and that the Council's decision notice did not accurately represent the Council's position in respect of the scheme.⁵ Accordingly the appellant contends that the development proposed should clearly have been permitted as the Council's opposition was not based on robust or specific justification.⁶
4. The Council's decision notice in respect of application Ref PA16/09196 states that the development proposed, 20 homes, would be on a greenfield site beyond the established built form of the village of Barripper, thereby obtruding into the countryside to the detriment of openness and the character and

¹ Reference ID: 16-028-20140306.

² Guidance Reference ID: 16-032-20140306.

³ As required by Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended.

⁴ With reference to those policies and documents referred to in the appellant's final comments at appeal.

⁵ Established at planning committee on 6 February 2017.

⁶ With regard to Guidance Reference ID: 16-049-20140306.

appearance of the surrounding area. I accept the appellant's position that this is a briefly stated reason for refusal.

5. However, as set out in the appeal decision to which this costs application relates, the appeal site is not previously development land within the terms of the National Planning Policy Framework (the 'Framework'), and falls outside of Barrigger, albeit adjacent to it. The premise of the Council's opposition to the development proposed is therefore accurate.
6. Moreover with reference to paragraph 2.33 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (adopted November 2016, the 'LP'), 'open countryside' is defined as the area outside of 'the physical boundaries of existing settlements'. Thus within the terms of the LP the appeal site falls within the open countryside. It is therefore not unreasonable for the Council to have phrased their decision notice as they did, and in my view it therefore does not lack adequate clarity or precision.
7. Within their appeal statement ('AS') the Council give detailed consideration to the character of the appeal site, its surroundings, and its relationship to the built form of Barrigger.⁷ There is also reference to what the Council consider to be the value of the appeal site in contributing towards the rural setting of Barrigger and the visibility, or effect of, the development proposed from various surrounding vantage points.⁸
8. Whilst I have reached a different position to that of the Council regarding the substantive merits of the development proposed, within the associated appeal decision I equally noted that the proposal would result in some degree of change to the character and appearance of the area. The effect, or acceptability, of this change is inherently a matter of planning judgement (which, as set out above, the Council have given reasonable consideration to).
9. The appellant's contention regarding the Council's introduction of extraneous material is threefold: LP policies 1 and 12 and Framework paragraphs 7, 9, 58, 61 and 131 are cited in the decision notice but not discussed in detail in the Council's AS, conversely paragraphs 14 and 72 of the Framework are mentioned in the Council's AS but not in their decision notice, and that particular reference is made by the Council to the Cornwall and Isles of Scilly Landscape Character Study published in 2008 ('LCS') and the Council's emerging Site Allocation Development Plan Document ('DPD') at appeal, but not previously.
10. Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 'DMPO') requires that in refusing permission a decision notice must set out 'clearly and precisely' the full reasons for refusal, including all policies which are relevant to the decision. I have dealt with the clarity and precision of the Councils' decision notice above.
11. The statutory basis for decision taking is that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise, not selective elements of the development

⁷ At paragraphs 5.3, and 5.9 to 5.12 in particular.

⁸ At paragraphs 5.9 to 5.11 in particular.

plan. Therefore whilst I appreciate there is limited discussion regarding LP policies 1 and 12 in the Council's AS, they are nevertheless relevant to the decision in this context (and can readily be understood without additional explanation beyond that within the LP itself).

12. Similarly the Framework must be read as a whole, and paragraphs 7, 9, 14, 58, 61, 72 and 131 are relevant to the development proposed.⁹ Both the LCS and emerging DPD are in the public domain. They have both been produced by the Council either as evidence underpinning decision-taking or indicate the intended direction of future planning policy. In my view references to the LCS and DPD made by the Council at appeal were therefore appropriate for the sake of comprehensiveness, rather than being introduced inappropriately as substantively new grounds for opposing the development proposed.
13. I have reviewed the minutes of the West Sub-Area Planning Committee of 6 February 2017 related to application Ref PA16/09196. Whilst the reasons for refusal given within the Council's decision notice do not capture all of the debate at Committee, nevertheless they refer to various elements of the discussion at committee (including the relationship of the development proposed to Barripper, and effect of the development proposed on the open countryside). Whilst the decision of Council Members differed from the recommendation of officers, in this context, and on account of my reasoning above, I am not of the view that in taking this approach that any action or inaction taken by the Council amounts to unreasonable behaviour.

Conclusion

14. For the above reasons, and having taken account of all other matters raised, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Accordingly, and with reference to the approach in the Guidance, an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR

⁹ Albeit that some paragraphs offer general advice regarding the operation of the planning system, or in the case of paragraphs 131 and 72, reference thereto has been made by the Council only in so far as the development proposed would not conflict with the approach set out in those paragraphs.