
Costs Decision

Site visit made on 25 July 2017

by C Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 23 October 2017

**Costs application in relation to Appeal Ref: APP/D0840/17/3173733
Annears Garage, A390 From Bridge Street to Porcupine, Twydrreath
Highway, Par PL24 2RN**

- 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 Steve Annear for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for a two storey dwelling.
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Decision

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

Procedural Matter

2. Due to an administrative error, the appeal decision was issued before the Council had responded to the appellant's claim for costs. This does not prejudice my consideration of either party's case.

Reasons

3. The NPPG¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The appellant argues that the Council's application of the sequential test was flawed. Reference is made to an Appeal Decision² where three dwellings were allowed in Flood Zone 2 at Devoran Boatyard. The Inspector in that case found that sites with planning permission could not be said to be reasonably available in the context of Paragraph 101 of the Framework³. It was also stated that the Council were unable to identify alternative sites with a lower probability of flooding. I note that costs were awarded to the appellant in that case.
5. However, it was made clear in the Devoran Boatyard appeal that the Council could not demonstrate a five year supply of deliverable housing sites. Therefore, sites in addition to those that already had planning permission were necessary in order to address local housing needs.
6. The Council refer directly to the Devoran Boatyard case in paragraph 5.14 of their appeal statement. It is confirmed in paragraph 5.21 that the Council are

¹ National Planning Practice Guidance.

² Appeal Decision: APP/D0840/W/16/3143424

³ National Planning Policy Framework.

able to demonstrate a five year supply of deliverable housing land, which is made up of sites with planning permission. An argument is put forward in paragraph 5.18 to explain why the Council consider that sites with planning permission should be considered 'reasonably available' and reference is made to Government literature in order to help support this stance.

7. Paragraph 5.22 of the Council's appeal statement indicates that even if sites with planning permission were to be discounted, there remain sites capable of accommodating a dwelling. Subsequent paragraphs refer to windfall rates on smaller sites as well as the availability of larger SHLAA⁴ sites. It is stated that sites at risk from flooding were discounted from the SHLAA calculations. Copies of monitoring reports were submitted alongside the appeal statement to help substantiate the figures quoted. It therefore seems to me that the Council has provided sufficient evidence to justify their application of the sequential test in light of the Devoran Boatyard case. In my main decision, I found that the Council had demonstrated that sequentially preferable sites were available from a range of sources, in addition to those with planning permission.
8. The appellant also argues that the Council failed to balance the wider sustainability objectives as required in paragraph 102 of the Framework, which relates to the exception test. In paragraph 5.70 of their appeal statement the Council state that as they consider the sequential test has not been passed, there is no need to apply the exception test. Nevertheless, the exception test is addressed in subsequent paragraphs, including an assessment of sustainability benefits in paragraphs 5.81-5.89. This includes the matter of whether the dwelling meets a business need (paragraph 5.88) which is covered further in paragraphs 7.2-7.8. As such, I consider that the Council have substantiated their reason for refusal with regard to these matters.
9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

C Cresswell

INSPECTOR

⁴ Cornwall Strategic Housing Land Availability Assessment.