
Costs Decision

Hearing Held on 14 February 2018

Site visit made on 14 February 2018

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 06 April 2018

Costs application in relation to Appeal Ref: APP/D0840/W/17/3179166 Land off Loggans Road, Loggans Road, Hayle TR27 4PL

- 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 Ben Pearce (Pearce Fine Homes Ltd & St Piran Homes Ltd) for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for forty three dwellings (including thirteen affordable dwellings (30%)) with estate road and all associated works.
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Decision

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

Reasons

2. The National Planning Practice Guidance (the NPPG) 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.
3. In this case, the Council's pre-application advice gave no indication that the proposal would be in conflict with the Cornwall Site Allocations Development Plan Document (the Allocations DPD). Indeed, the appeal site was excluded from the Allocations DPD because the Hayle Housing Evidence Report deemed it too small to be a strategic allocation. Instead it was indicated that the site could be considered for development on its individual merits.
4. Although I appreciate that the Council's stance may have come as a surprise to the appellant, I do not consider that a local authority should necessarily be bound by views expressed within pre-application advice. At this early stage in the process, the Council would not have been in a position to have carried out the full range of internal and external consultations necessary to establish its final position on the proposed development.
5. Furthermore, the weight that should be attached to an emerging DPD is largely a matter of planning judgement, which may well change over time depending on how close the plan is to being formally adopted. In this particular case, the draft Allocations DPD underwent a period of formal public consultation in the time period between the planning application being lodged and the Council submitting its Appeal Statement.

6. It therefore seems reasonable for the Council to attach a greater degree of weight to the Allocations DPD in this appeal than might have been the case when pre-application advice was sought. The reasons why the Council consider the proposal to be in conflict with the Allocations DPD are set out within paragraphs 5.1 to 5.10 of its Appeal Statement.
7. The initial consultation response from the Council's Historic Environment team (dated 21 March 2017) considered that insufficient evidence had been provided regarding the effect of the proposal on the setting of Loggans Mill, the Grade II listed building immediately adjacent to the appeal site. Whilst the appellant disagrees with this assessment, it is a matter of planning judgement which the Council were entitled to take a view on. The consultation response gives an explanation of why this view was taken. I therefore consider that the Council justified their actions and hence acted reasonably in this regard.
8. Although the Council was in a position to determine the application on the strength of the initial heritage assessment, the appellant opted to address the concerns raised within the Historic Environment team's consultation response. I am informed by the Council that the appellant's subsequent heritage report (dated 10th May 2017) was received 6 days before the target date and led to the application failing to be determined within the deadline. Given that this report was submitted at the discretion of the appellant in order to supplement his original evidence, I do not consider that the delay was a result of the Council acting unreasonably.
9. Furthermore, I consider that it was reasonable for the Council to explore the possibility of financial contributions towards the upkeep of Loggans Mill, even if this was not subsequently pursued at the appeal. This was another matter covered within the Historic Environment's consultation response and was also raised in the response of the Neighbourhood Plan Steering Group. The Council therefore had justification to investigate this matter further and there is little evidence to suggest that it caused further delays.
10. The fact that the Council's Appeal Statement does not express any concerns about the setting of the listed building indicates that the authority are now satisfied with the appellant's evidence in this respect. It is not an indication that the heritage report dated 10th May 2017 was irrelevant.
11. The appellant also argues that the Council failed to engage on the terms of the draft planning obligation submitted with the application. However, it seems to me that this is a grievance relating to the Council's handling of the planning application rather than an example of any unreasonable behaviour which took place during the appeal process. Considering that the parties fundamentally disagreed over the need for highway contributions there is little to suggest that the appeal could have been avoided even if there had been further dialogue regarding the draft planning obligation.
12. For the reasons set out above, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Colin Cresswell

INSPECTOR