

## Appeal Decision

Site visit made on 19 September 2019

**by D Cramond** BSc MRTPI

**an Inspector appointed by the Secretary of State**

**Decision date: 02 October 2019**

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**Costs application in relation to Appeal Ref: APP/D0840/W/19/3219673  
Land adj to Penrose, West of Church of the Annunciation, Main Road,  
Ashton, Cornwall, TR13 9SR**

- 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 RJD London Mayfair Limited for an award of costs against the decision of Cornwall Council.
  - The appeal was made against the refusal of an application, Ref PA18/04436, which sought outline planning permission for the erection of 7 dwellings and associated works (outline with appearance, landscaping and scale reserved).
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### Decision

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

### Reasons

2. Planning Practice Guidance (guidance) 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.
  3. The Appellant argues that the Council acted unreasonably in that a proper consideration of the proposals against the relevant policies in the Development Plan (i.e. Policies 3 and 21) would have indicated that the principle of residential development was acceptable. The case is made that the site offers a rounding off opportunity. The definition of rounding off is included in an informal Chief Planning Officer's Advice Note – Infill/Rounding Off (December 2017) (AN) and there was no regard to this note in the determination of the application. The wrong policy context was used. The Council appears to have assessed the site as a rural exceptions site when this was not the nature of the application. The case is put that the site lies within the defined settlement of Ashton and the site is surrounded by existing development. The Council should have seen it this way. There is no special landscape designation across this site.
  4. The Appellant is concerned that the reason for refusal indicates that no affordable housing was provided when it is argued this could be dealt with via a Unilateral Undertaking (UU). Such an undertaking was enclosed with the appeal documentation and it is put that this satisfactorily secures an offsite contribution towards affordable housing and thus the Council should have had no concerns on this front.
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5. The Appellant underlines that in view of the above, a full award of costs should be given against the Council for its unreasonable behaviour in causing an appeal to be necessary.
6. The Council has not responded to the Appellant's claims.
7. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full, or indeed partial, award of costs.
8. As regards the points raised in Paragraph 3 above I have to say that the matter of whether this land is classed as a rounding off site is inevitably somewhat subjective. I have taken the view that it is but the Council was of the opinion that it was not. After reasonably and correctly citing LP Policy 3 in the Officer Report the subjective opinion was reached that the land would neither represent infill or round off of the settlement and that from the Council's perspective the only possible avenue for development might be as a rural exceptions site. The Council read the application scheme as one for market housing. There was some contradictory material in the application however, understandably from the Appellant's side the application did not contain sufficient, or arguably any, affordable housing quantum for it to be classed as a rural exceptions site because that was not the intent. In the Council's eyes it failed to be rounding off and failed to be a rural exceptions site. On a point of detail I am not convinced that the Council needs to cite the AN in every report and particularly so when the LP alongside Policy 3 includes some explanatory text on rounding off. Furthermore the Council made no extravagant claims about the landscape quality of the land itself but rather considered it as open countryside and explored this to a degree in its wider context.
9. On the matter of affordable housing the Council had no UU in front of it when determining the application. The application was made in May 2018 and determined in August 2018 which would have given time for a UU to be submitted or affordable housing content to be unequivocally set out. In the circumstances it does not seem unreasonable that the Council cited a lack of affordable housing as part of the refusal reasons particularly as it did not see this land as being a rounding off site. The UU only appeared after the appeal was made.
10. Although I have dismissed the appeal, I do not agree with the conclusion reached by the Council on a main issue relating to the scheme. However I would nevertheless defend the Council's wording and assertions in the round as not being unsubstantiated and its actions throughout the process as not being irrational.
11. Given all the circumstances I find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

*D Cramond*

INSPECTOR