The Planning Inspectorate

Costs Decision

Site visit made on 17 September 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Costs application in relation to Appeal Ref: APP/D0840/W/19/3225046
Penmere and Trelyn, The Crescent, Truro, Cornwall TR1 3ES

- 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 Kernoweth Homes Ltd for a full (or in the alternative, partial) award of costs against Cornwall Council.
- The appeal was against the refusal of planning permission for the extension and alterations to garages at the rear of the proposed development at Trelyn and Penmere.

Decision

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

Reasons

2. The Government's Planning Practice Guidance ('the PPG') advises that costs may 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 considers that taking account of the PPG the Council has prevented or delayed development that should clearly have been permitted; has failed to produce evidence to substantiate the reason for refusal; has made vague, generalised and inaccurate assertions about the proposal's impact unsupported by any objective analysis, and has not properly considered whether conditions could have allowed the development to go ahead.

4. The initial officers' report recommended an approval on the balance of planning arguments. This was a well argued case but Members were entitled to take a different view both in terms of the individual planning merits and the weight to be attributed to the competing factors in coming to an 'on balance' planning judgement. It will also be apparent from my Decision that I agree with the Committee's decision to refuse permission.

5. The appellant considers that in forming their judgement Members were unduly swayed by the weight of public opposition to the scheme. However, having read the third party representations I am satisfied that these argued the case on relevant planning matters and in some cases in considerable detail. I am also satisfied that it was the weight of argument rather than just the weight in terms of the numbers of comments that was taken into account.

6. The Notice of Refusal has been criticised by the appellant, but in my view all the terms used, *'increased density, siting, height, massing, mutual overlooking …… cramped'* have been used on a sound basis and properly applied to the

scheme. Some of the points arise logically derive from the substantive argument against the proposal whilst others follow from third party comments. However in either case I do not find them to be vague, generalised or inaccurate and the Members are entitled to refer to them in their decision to refuse permission.

7. In procedural terms, because Members refused permission against an officers' recommendation the full basis of the Council's revised case could not be set out until the submission of the Council's appeal statement. Even though the appellant disagrees with it, I do not consider that this Statement can be fairly criticised in either quantitative or qualitative terms.

8. The appellant refers to the fall back situation as regards the already approved scheme. However, as the implications of this scheme have been accepted through a grant of permission it is not a fall back that carries weight in the argument for the approval for the current proposal. A fall back is only relevant when, if implemented, it could have the same or even greater adverse effects than a current proposal. In this case the development is an 'add on' to a scheme that has already been accepted and it is this additional development on a constrained site that has led to the refusal of permission.

9. Taken overall, the appeal scheme has valid planning arguments both for and against it, thereby requiring a balanced judgement to be made. This was made initially in the form of a recommendation in the appellant's (then applicant's) favour in the officer report, but reversed by Members. I consider that this final decision was properly made and subsequently fully and fairly supported by written evidence from the Council.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Martin Andrews

INSPECTOR