
Costs Decision

Site visit made on 24 September 2019

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Costs application in relation to Appeal Ref: APP/D0840/W/19/3232534 Lyndon House, East Hill, Blackwater, Truro, Cornwall TR4 8HW

- 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 Cornwall Council for a full award of costs against Mr P Medlin.
 - The appeal was against the refusal of planning permission for the erection of a bungalow & garage & alterations to existing access (re-submission of PA18/08030).
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Decision

1. The application for an award of costs is allowed in full, in the terms set out below.

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. The applicant, in this case the Council, has made an application for a substantive award of costs with reference to advice in the PPG which states that parties who pursue an appeal unreasonably without sound grounds for appeal may have an award of costs made against them². The applicant submits that the appellant focused solely on Policy 21 of the Cornwall Local Plan Strategic Policies 2010-2030 adopted 2016 (CLP) without considering the CLP as a whole or without reference to the St Agnes Parish Neighbourhood Development Plan 2018 – 2030 (NDP).
4. In his statement the appellant primarily focuses on the previously developed land (PDL) status of the site. A brief reference is made to infill or rounding off, which relates to Policy 3 of the CLP, although such matters are not considered in any detail. This is contradicted by the appellant in paragraph 2 of his final comments where he states that the appeal was not submitted on the basis that the proposal constituted infill or rounding off. Supporting text to Policy 21 takes the decision maker back to Policy 3³, which clearly states that the development of PDL will be accepted outside of the named towns where it is within or immediately adjoining a settlement. This matter was not considered in the appellants submissions, and in my appeal decision I found that the proposal

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

² Planning Practice Guidance Paragraph 001 Reference ID: 16-001-20140306

³ CLP paragraph 2.130

would not be within or immediately adjoin an existing settlement. This is the view that the applicant expressed in its officer report, and no other material considerations were advanced by the appellant as part of the appeal to indicate that a different view should have been taken.

5. The successful NDP referendum was held on 8 August 2019, which is after the appellant submitted the appeal. I therefore accept that this document did not carry full weight at the time the appeal was lodged. As such I do not consider it to be unreasonable for the appellant to have not referred to the NDP in his initial submissions. Although I find it surprising that the appellant did not refer to this document in his final comments, in response to the applicant's statement, which considered the NDP in detail.
6. However, even if the NDP referendum had not been successful, when considering the proposal in the context of the CLP as a whole, the development is clearly not in accordance with the development plan, and no other material considerations such as national policy are advanced that indicate the decision should have been made otherwise⁴. Therefore, the appellant has behaved unreasonably by submitting an appeal that had no prospect of succeeding. The applicant has been put to the expense of defending its position.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr P Medlin shall pay to Cornwall Council the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Mr P Medlin, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Tucker

INSPECTOR

⁴ Planning Practice Guidance Paragraph 053 Reference ID: 16-053-20140306