
Costs Decision

Site visit made on 27 November 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

**Costs application in relation to Appeal Ref: APP/D0840/W/19/3237217
The Lodge, Road from Five Lanes to Trevenna Cross, Trevenna Cross,
St Mawgan TR8 4HA**

- 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 Ms Sarah Howie for a full award of costs against Cornwall Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for outline planning permission with all matters reserved for the construction of two dwellings.
-

Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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 process¹.
3. The Applicant submits that, as the Council failed to issue a decision on the planning application within the prescribed period, the Applicant incurred costs in preparing and submitting an appeal to obtain a decision. That is essentially a procedural matter relating to the Council's handling of the application prior to the appeal. Furthermore, the Applicant submits that it was unreasonable for the Council to request that evidence be produced which confirmed the position of the appeal site with regards to whether such land would constitute previously developed land.
4. According to the PPG, in any appeal against non-determination, the Council should explain their reasons for not reaching a decision within the relevant time limit. It also says that if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the Applicant would have enabled the appeal to be avoided, the Council may be at risk of an award of costs².

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 048 Reference ID: 16-048-20140306

5. In applying for costs, the Applicant has referred to the fact that the planning application to which the appeal related was not determined by the Council within the prescribed period and no formal extension to the decision deadline was agreed by the parties beyond 23 August 2019. Whilst that may be so, information submitted with the appeal shows that the Council was in communication with the Applicant during the appeal and up to 23 August 2019, confirming that they were seeking to conclude the determination of the application.
6. Concerns regarding the principle of development at the appeal site were identified dating back to the original planning application which, the evidence before me indicates, was described as an application for outline planning permission with all matters reserved for the construction of four dwellings (including two affordable dwellings).
7. The information submitted shows that rather than refusing the original application, the Council sought to work positively with the Applicant advising that they had significant concerns regarding the acceptability of the proposal. The Applicant continued to work with the Council, submitting an amended and substantially different scheme.
8. Accordingly, whilst I accept that the Council did not determine the application within the prescribed period, the evidence shows that this was because they were seeking to work with the Applicant in a constructive manner and in an attempt to see if the scheme could be amended so as to overcome their concerns. It is reasonable for the Council to have given further consideration to the matter and it was reasonable and necessary, in my view, for relevant parties to be re-consulted on the changes resulting from the amended application.
9. Therefore, although I found for the Applicant in the main appeal, given the above, the Council's actions do not, in my view, amount to unreasonable behaviour. Rather, the Council demonstrated flexibility in accepting the amended planning application and re-consulting on it, in advance of reaching any final decision. Unreasonable behaviour has not therefore been demonstrated in this regard.
10. Further to the above, and in relation to the Council's request that the Applicant provide additional evidence which confirmed that the whole of the appeal site would constitute previously developed land, it will be seen from my decision that I have concluded that Trevenna Cross would constitute a settlement in terms of the development plan. Consequently, in accordance with the decision in the case of *Dartford BC v SSCLG* [2017] EWCA Civ 141, the appeal site could not be considered to be previously developed land.
11. The evidence before me indicates that the Council did not consider Trevenna Cross would constitute a settlement and, given the submissions of the Applicant with regards to the benefit the proposal may bring in respect of use of previously developed land, I find it reasonable that the Council seek confirmation and evidence to support the contention that the land would accord with the definition of previously developed land as provided within the National Planning Policy Framework. Unreasonable behaviour has not therefore been demonstrated in this respect.

12. In conclusion, I find that the Council has not acted unreasonably in the appeal process and the Applicant has not been put to unnecessary or wasted expense. Accordingly, an award of costs is not justified.

A Spencer-Peet

INSPECTOR