



Costs Decision

Site visit made on 27 January 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Costs application in relation to Appeal Ref: APP/D0840/W/19/3239304 Land located on the east of Wesley Road, Cubert, Cornwall TR8 5HB

- 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 Kingsley Homes Limited for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for a residential development of up to 30 dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant has set out in detail the reasoning why a full award of costs is justified. This includes that it is said the Committee did not accept the clear data and methodology which showed an affordable housing need for the Parish and unreasonably disregarded this information and established approach without good reason. The approach to justifying the refusal based on permissions in Crantock, which was sustained in the arguments of the Council in the appeal submissions, was in particular not founded in policy or in the draft (as it was then) Housing Supplementary Planning Document. It is argued this was inconsistent with the approach to other similar affordable housing sites.
4. It is said that the reason for refusal was drafted after the meeting by officers to include further matters that were not or little debated at the meeting. Matters have been raised, such as landscape impact, that had no reasonable basis for refusal. The decision of the Council has delayed development that should clearly have been permitted and also the Council's case did not provide evidence to substantiate the reason for refusal making vague, generalised or inaccurate assertions.
5. The Council has responded and considers that the case made on affordable housing is robust with the permissions indicating that with the 20 homes at Penhale Camp appropriate to being able to help deliver need in the Cubert Parish and the 6 being delivered at Holywell Road mean that there was not the local need, notwithstanding the permissions in Crantock. It is argued that the Council has been consistent because the other highlighted affordable housing

proposals are not comparable and that the other objections to the proposal are well founded and evidenced.

6. While I note the concerns raised in connection with the drafting of the reason for refusal this is a matter for the Council's processes and the Guidance indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage¹. A number of issues were raised in the reason for refusal and I consider that matters regarding the impact on the character and appearance of the area, harm to designated and non-designated heritage assets, and the loss of the best and most versatile agricultural land are matters of planning judgement. The Council made satisfactory arguments, based on planning policy, such that it was able to make an adequate case in these respects. The refusal of the planning permission, contrary to the officer recommendation, with reference to these matters was not unreasonable and therefore in this respect no award of costs is justified.
7. In terms of affordable housing the reason for refusal indicated that the scheme did not address a clear and demonstrable local need for affordable housing. The Planning Report had set out the housing need figures for the Parish of Cubert, following a survey that the Council itself had undertaken, which identified a need. This evidence was updated in the addendum report that confirmed the need.
8. It appears there was some information available at that time indicating that the Penhale Camp site had stalled² although the information before the Committee was not presented with this phraseology. The Committee Report advised that the timescales for delivery of this scheme were unknown at that time, and therefore this scheme was unlikely to meet any of the current housing need within the next 2 years. The Committee was also informed that as the scheme also contributed to meeting Perranzabuloe's housing need under the terms of the s.106 agreement, it therefore could not be assumed the scheme will solely meet Cubert's housing need and thus reduce the number of identified "Cubert" households in need by twenty, respectively.
9. Taking this information as a whole, and having regard to the analysis on this matter in the appeal decision, it appears there was at that time at least some potential for the Penhale Camp site to deliver some affordable housing in the future. With a planning permission in place, it was a matter of judgement to determine the weight to be afforded to this permission and the related potential delivery of housing which could include, as a primary area, affordable housing for the Parish of Cubert. I am conscious that the appeal proposal, if permitted, would also take some time to construct before any affordable housing would be delivered.
10. While I note the references to Crantock housing in the discussion, on balance, I do not consider that it was unreasonable at that time, taking all the information available in the round, to consider that the planning permission at Penhale Camp as potentially contributing to meeting part of the need for affordable housing in Cubert. As a consequence, this would have affected the number of affordable units that may have been required and therefore whether the appeal site was needed to make the contribution that it proposed.

¹ Although the behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.

² as referenced in the applicant's final statement on costs paragraph 8.6

11. At the appeal stage, the Council did not include the Penhale Camp figures in its final analysis and relied, in substance, on the affordable housing figures for Crantock to seek to demonstrate that there was not the need for the scheme to deliver affordable housing in Cubert. This approach was not consistent with Policy 9 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) for the reasons explained in the decision and I consider this was unreasonable.
12. The Planning Practice Guidance advises that a local planning authority is at risk of costs if it does not review their case promptly following the lodging of an appeal. In this case, the appellant's statement was submitted when the appeal was made and it sets out evidence on affordable housing and other matters. The Council could have reviewed the situation with regard to Penhale Camp at that point, which it appears, from the paperwork before me following the publication of the Cornwall Monitoring Report - Cornwall 5 Year Housing Land Supply Statement 2019, its stalled situation was clear. Instead it relied on the argument based on housing delivery in Crantock. This led to the applicant having to submit a final statement to rebut these housing matters and this led to unnecessary and wasted expense at that stage.
13. The applicant's reference to other affordable housing schemes which the Council considered at the same time is noted and, while consistency is important, they appear to have their own circumstances such that they have been determined on their merits.

Conclusion

14. The objections to the proposal in respect of the impact on the character and appearance of the area, heritage assets and the loss of the best and most versatile land are matters of planning judgment. The Council provided satisfactory arguments to justify these parts of the reason for refusal. This was not unreasonable behaviour and, in these circumstances, the appeal could not be avoided.
15. In terms of whether there was a clear and demonstrable local need for affordable housing, the information to be taken into account at the time of the Council decision, in particular the Penhale Camp site, was a matter of judgement. I consider that, based on all the information before me and on balance, the Council did not act unreasonably at that time.
16. For the reasons explained above, the arguments on affordable housing delivery at the appeal stage, because of the then acknowledged stalled status of the Penhale Camp, meant that it relied on an argument that was not based on the correct application of Policy 9 of the Local Plan. This led to unnecessary and wasted expense at the final comments stage in relation to the affordable housing need as the appellant had to rebut these matters and a partial award of costs is justified in this regard.

Costs Order

17. 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 Cornwall Council shall pay to Kingsley Homes Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to responding to issues of affordable housing need at the

final comments stage, such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR