



Costs Decision

Site visit made on 23 March 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Costs application in relation to Appeal Ref: APP/D0840/W/20/3244338 Chy Gwyn, Sampys Hill, Mawnan Smith TR11 5EW

- 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 Mr P Nixon for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for a dwelling to incorporate design amendments following refusal of PA19/02172.
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Decision

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

Procedural Matter

2. I have treated the application as seeking a full award of costs based on the details and range of case made in the submissions.

Reasons

3. The Planning Practice Guidance 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.
4. The applicant, in summary, makes the case that the local planning authority has delayed development that should have been approved, taken the negative stance of the Parish Council and failed to pay due regard to the amendments from the previous approval. Furthermore, at the appeal stage the local planning authority introduced the draft Mawnan Parish Neighbourhood Development Plan 2019-2030 (SEA/HRA Version) (August 2019) (the draft NDP) quoting conflict with policies that had not been the subject of public consultation despite the planning report making it clear that no weight should be given to this document. This led to unnecessary and wasted expense at the appeal stage.
5. The Council has responded to say that they assessed the submissions of the Parish Council as a consultee and agreed with one aspect of the response. In respect of the amendments, again the Council say they took these into account but they were insufficient and of a minimal nature such that they did not overcome the reason for refusal.
6. The Council indicate that the progress of the draft NDP is constantly changing and this alters the weight to be attributed in the decision making process. It is argued that the applicant should have been aware of the policies of the draft NDP and therefore has not been put to additional time in reading them.

7. I consider that the Council took into account the views of the Parish Council but came to its own judgement on the merits of the proposal. Furthermore, I am satisfied that the Council also had regard to the changes to the earlier scheme and this is referenced in the planning report. However, it was a matter of judgement as to whether these changes overcame the previous reasons for refusal. As it will be seen from the appeal decision, I consider that the decision of the Council to refuse the revised scheme was well founded and therefore the local planning authority has not prevented development that should have been permitted.
8. The draft NDP is dated August 2019. The Council decision on the proposal was made in November 2019 following the recommendation in the associated planning report. The planning report indicates that the draft NDP should be considered to have no weight. At the appeal stage, the Council's statement in February 2020 indicates that the draft NDP should carry moderate weight. A detailed explanation of the progress of the draft NDP during this period has not been set out and therefore it is not clear why different weights have been attributed to the document. The Planning Practice Guidance explains that an emerging Neighbourhood Plan is likely to be a material consideration in many cases. I have attributed the draft NDP very limited weight in my decision and therefore, despite this very limited weight, it follows that the draft NDP is a matter that forms part of the overall considerations.
9. As the draft NDP had been published, I consider that the applicant would have needed to read the key parts of the document to ensure that all information had been considered in the submissions.
10. The NDP is referenced in the final comments by the applicant and while extracts from the policies are quoted, only a reasonably brief analysis is made because it is argued that the draft NDP carries no weight. In these circumstances and on the basis that I consider that it would be necessary to read the document and I have attributed the draft NDP some weight, the applicant has not been put to unnecessary and wasted expense in examining and commenting on the draft NDP.
11. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR