
Costs Decision

Site visit made on 30 October 2019

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2020

Costs application in relation to Appeal Ref: APP/D0840/Q/19/3220143 Woodsaws Farm, Lanreath, Looe PL13 2NT

- 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 David John Wills, Angela Mary Wills and Michael John Wills for a full award of costs against Cornwall Council.
 - The appeal was against the refusal to discharge a planning obligation in full.
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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 that, irrespective of the outcome of the appeal, costs may only 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 Guidance provides examples of behaviours that risk an award of costs, including: failing to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and not determining similar cases in a consistent manner.
4. The applicants contend that the Council has failed to deal with the proposal in a manner consistent with their approach to other proposals involving rural workers' dwellings. Appendices 6–10 of the applicants' appeal statement comprise officer reports where rural workers' dwellings are recommended for approval subject to an occupancy condition but without an accompanying planning obligation that ties the dwelling to an associated agricultural holding. The Council asserts that those applications differ from the current appeal insofar as they are new dwellings and the particular circumstances of each case may involve material considerations which differ from the current proposal. Whilst I have not been provided with full details of the referred applications, the Council's rebuttal on this point does not substantively address the apparent inconsistency in approach given an occupancy condition would remain on the original permission related to the appeal site.

5. Appendices 13-15 of the applicants' appeal statement comprise officer reports where the Council recommended that applications for the discharge of planning obligations linked to rural workers' dwellings were granted. The Council asserts those previous applications differ from the current proposal insofar as they were not accompanied by an application to remove the rural worker occupancy conditions from the various permissions. Again, this reasoning somewhat ignores that a rural worker occupancy condition is still extant on the original permission relating to the current appeal. Whilst the applicants may have previously sought to secure use of the barns as four residential dwellings unencumbered by any occupancy conditions, the application to that effect was refused and later dismissed on appeal¹.
6. As such, given the evidence before me, I find the Council's rebuttal of the alleged inconsistency of approach, in relation to these previous applications and the current appeal, is unsupported by any substantive evidence. I therefore find that unreasonable behaviour in this regard has been demonstrated.
7. The applicants' also raise concerns that the Council has made vague, generalised and inaccurate assertions about the proposal's impact. I acknowledge that the Council's intention to prevent a harmful proliferation of new houses in the open countryside is reflective of adopted policy. Nevertheless, the Council's evidence failed to address the limitations of the s106 wording with regards to the existing potential for the separate sale of 'the Farmland'. The Council also failed to give due regard to the existing condition securing occupancy of units 1 and 2 in a manner consistent with the current development plan, the National Planning Policy Framework and the Guidance. As such, I find the Council made vague and generalised assertions about the proposals' impact on the open countryside which are unsupported by an objective analysis. I therefore find that unreasonable behaviour in this regard has been demonstrated by the Council.
8. Furthermore, it is alleged that the Council's appeal statement introduced concerns regarding the haulage business' functional need for a dwelling, and that these concerns did not form part of the officer delegated report or the refusal reason. The Council asserts that references to the needs of the haulage business within its statement of case are entirely reasonable given the appeal relates to the discharge of all the obligations contained within the s106. The Council's rebuttal of this point misses the fundamental issue that reference to the functional needs of the haulage business did not form part of the Council's refusal reason. As such, I find to introduce this new evidence at the appeal stage demonstrates unreasonable behaviour.
9. Overall, therefore, I find that unreasonable behaviour has been demonstrated by the Council and this has caused the applicant unnecessary expense in the appeal process.

¹ Appeal Ref: APP/D0840/W/18/3213703

Costs Order

10. 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 David John Wills, Angela Mary Wills and Michael John Wills, the costs of the appeal proceedings described in the heading of this decision; with such costs to be assessed in the Senior Courts Costs Office if not agreed.

S D Castle

INSPECTOR