



## Costs Decision

Hearing held on 11 May 2020

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2020

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### **Costs application in relation to Appeal Ref: APP/D0840/W/19/3241270 Penlease, Hobbacott Lane, Marhamchurch, Bude EX23 0ET**

- 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 Gardener for a full award of costs against Cornwall Council.
  - The Hearing was in connection with an appeal against the refusal of planning permission for an agricultural tied dwelling.
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### **Decision**

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

### **Procedural Matters**

2. The application for costs was made in writing and the Council provided a written response prior to the Hearing. At the event, both parties confirmed that they did not wish to amend their earlier written statements. The appellant provided final comments orally.
3. The appellant's final comments can be summarised as: the Council has accepted that the planning officer must decide the planning application, not the Chief Land Agent and Valuer ('CLA'), but this specialist's response was the sole subject of the officer's report; the Council's behaviour during consideration of the application can be considered in the costs application, as full and proper assessment of the evidence would have resulted in the grant of permission; in that scenario the appeal and all associated costs would have been avoided.

### **Reasons**

4. 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.
5. Following a previous refusal of planning permission for an agricultural worker's dwelling on the appeal site due to a lack of information, the appellant made the appeal application in effort to address the Council's concern. An appraisal was provided, setting out the appellant's future business intentions in detail.
6. The CLA assessed the proposal and advised the planning officer that a reasonable case for an agricultural dwelling had been made, with the enterprise described justifying a functional need for a dwelling. However, the CLA also raised concern that the enterprise had not been established at the appeal site

- and that if it did not materialise, there would be no functional need. Such had been a factor in the dismissal of another appeal<sup>1</sup>, elsewhere.
7. Whilst the CLA did not make the final recommendation or decision on the planning application, the planning officer's report provided little independent analysis of the planning merits of the case. However, the report does set out that the CLA considered additional evidence provided by the appellant and made further comments to the planning officer.
  8. Whether or not the Council should have requested copies of accounts that had not been submitted, or considered the proposal as relating to a new enterprise, it is clear that the future enterprise would be a smaller version of the appellant's current combined businesses and different from the business that would continue. Although I have accepted that, unlike the other appeal referred to, the proposal before me relates to an existing enterprise, the Council's reason for refusal was clear that it did not consider the enterprise to have been established at the appeal site.
  9. I have evidence setting out that some activities that contribute to a functional need have now begun at the appeal site. However, as set out in my main decision, I have found that the appeal enterprise is currently run from the appellant's existing dwelling at Buttsbear. Whilst a move to the appeal site would generate a functional need for a dwelling there, there is no compelling evidence that such a move is necessary. When considered in the round therefore, a new dwelling at the appeal site is not required for the effective operation of the enterprise, the need being capable of being met by the existing dwelling at Buttsbear. Whilst not explicitly set out by the Council at the time of decision, that scenario is linked to the Council's stated main concern that the business is not established at the appeal site and does not require an additional dwelling there.
  10. In light of this, I find no substantive evidence that the Council did not properly consider the application that was before them, nor that further discussion would have resulted in a different decision, thereby avoiding the need for an appeal. Moreover, the Council's decision was explicitly based upon development plan policy and the relevant part of the National Planning Policy Framework, as set out in the officer's report and reason for refusal.
  11. At appeal stage, the Council's appeal statement described various policies that did not go to the heart of the matter in dispute. However, those parts of the appeal statement do provide relevant context in terms of the housing policies of the development plan and other matters such as landscape impact. They set out why, in the absence of a demonstrable need, a dwelling would be inappropriate at the appeal site. On that basis, I find that this commentary does not fundamentally change the Council's position in respect of the main issue and its inclusion was not unreasonable.
  12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*M Bale*      INSPECTOR

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<sup>1</sup> Appeal ref. APP/D0840/W/15/3140564