
Costs Decision

Site visit made on 1 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

**Costs application in relation to Appeal Ref: APP/D0840/W/20/3256203
Trevidic Cottage, Access to Hendra Lodge from Coombe Road, Coombe, St Austell PL26 7LG**

- 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 M Kostuch for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the use as unfettered dwellinghouse (without holiday condition).
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Decision

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

Reasons

2. Planning Practice Guidance (the PPG) 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 expense in the appeal process.
3. The PPG includes examples of unreasonable behaviour by planning authorities. Amongst other things, this can include; preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan national policy and any other material considerations, failure to produce evidence to substantiate each reason for refusal on appeal, vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and not determining similar cases in a consistent manner.
4. The Applicant has put it to me that the Council failed to consider that the appeal proposal was not 'development' and that, as such, assessment of the proposal against policies of the development plan which refer to 'development' or 'new development' should not be applied in this instance.
5. As will be seen from the appeal decision, whilst the submissions of the Applicant were noted, it appears that the Applicant accepted that planning permission would be required in relation to the appeal scheme. Accordingly, the Council were correct to determine the proposal against the policies of the development plan. It appears from the Officer's report and the Council's statement that the appeal proposal was considered in light of those policies and provided reasons why, in the Council's belief, that the proposal did not accord with the development plan.

6. In any event, and as noted in the appeal decision, even if the development plan was silent with regards to the proposal, then the adverse impacts of the appeal scheme would significantly and demonstrably outweigh the benefits when assessed against the policies in the National Planning Policy Framework (the Framework) taken as a whole. In this regard, it appears that the Council did consider the planning application with regard to the Framework by reference to relevant paragraphs of the Framework included within the Officer's Report and within the Reason for Refusal.
7. On the issue of whether the Council prevented or delayed development which should clearly be permitted, it will be seen from my decision that I agree with the Council in respect of the application of development plan policies related to the location of development and to the reliance on private motor vehicles for accessing services and facilities. It follows that the Council has not misapplied policies of the development plan or prevented development that clearly should have been permitted.
8. The Council's reason for refusal was based on the policies of the development plan and material planning considerations. Those policies and considerations required the exercise of judgment in determining whether the appeal site was located within a settlement. The reasoned justification for the Council's conclusion was contained in a detailed report. In my view, sufficient and substantive evidence was provided in defence of the reason for refusal in the appeal process and therefore there has been no unreasonable behaviour on behalf of the Council with regards a failure to produce evidence to substantiate each reason for refusal on appeal.
9. On the issue of whether vague, generalised or inaccurate assertions about the appeal scheme's impact were provided by the Council, I find that the information contained within the Council Officer's report was comprehensive with regards to describing the location of the appeal site and included those reasons why the Officer concluded that Hendra would not constitute a settlement. The report further considers how the proposed development would be harmful with regards to the poor level of access to services and facilities for future residents. The report provides clear and understandable reasons to substantiate the refusal on these grounds. Accordingly, given that I have found harm in relation to the location of development with regards to reliance on private vehicles to access even basic services and facilities, I conclude that the Council have not acted unreasonably in this respect.
10. With regards to determining similar cases in a consistent manner, the Applicant has put it to me that the Council has not been consistent in its assessment of what would constitute a settlement and has been inconsistent with regards to the suitability of the appeal site's location in respect of access to services and facilities.
11. In respect of the development at Rejerrah, it will be seen from my decision that I agree with the Council in that the appeal site and its surroundings does not appear to share the same characteristics and would not be comparable to the position under the cited planning permission at Rejerrah. Given the information and evidence that was before me, it does appear that the Council have therefore not been inconsistent with regards to the determination of what would constitute a settlement.

12. With regards to the development at Hendra Springs, while I note the Applicant's frustration in how the planning applications were determined, it appears from the evidence before me, and as noted within the appeal decision, that the circumstances of the respective proposals were not comparable.
13. The Officer's Report for Hendra Springs confirms that that site is located such that future residents would need to use private vehicles for access to services and facilities. However, whilst this weighed against the proposed development, other factors, primarily being that the building at Hendra Springs was redundant and worthy of retention, weighed in favour of that development and that, on balance, found that development to be in accordance with the development plan when taken as a whole. This does not appear to be the position with regards to the appeal scheme for the reasons outlined in the appeal decision. I therefore find that the Council has not acted unreasonably with regards to determining similar cases in a consistent manner.

Conclusion

14. 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