



Costs Decision

Site visit made on 24 November 2020

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3258348 Land 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 permission in principle for the erection of up to five properties.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may 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 applicant contends that the planning officer's report's interpretation of policy is flawed to the point of being irrational. Had it not been so, the planning application would have been granted and the costs of this appeal would not have been incurred. It is further asserted that the Council introduced two reasons for refusal at the appeal, relating respectively to Policy 7 of the Cornwall Local Plan: Strategic Policies Document 2010–2030 (adopted 2016) (CLP) and the Penhale Dunes Special Area of Conservation (the SAC).
4. The planning officer report focuses on the size of the site, utilising the relevant paragraph 1.65 of the CLP's supporting text. Whilst paragraph 1.67 is also used, there is no clear evidence that without it the Council would have made a different decision. References to the physical extension of the settlement in the reason for refusal are not a clear or prejudicial distortion of the policy wording.
5. Policy 3 of the CLP does require an assessment of the significance that large gaps can make to the setting of the settlement. Whilst this is not considered in substantive detail, the officer report refers to the site's openness and then goes on to identify harm to rural character. This is reasoning, albeit at a most basic level, which serves to avoid a justifiable accusation of manifest irrationality.
6. This finding of harm to rural character is also not irrationally inconsistent with the findings of the Inspector regarding the extant planning permission at the adjoining site (the Extant Permission), given that that decision acknowledged that the undeveloped character of this section of Wesley Road is a positive. It is also important to bear in mind that the Extant Permission was assessed as a rural exceptions site, within a different policy context. Further on this point, the

officer report considered the appeal proposal on the presumption that the Extant Permission will be developed, pre-emptively assessing the site as a remaining undeveloped gap in the street scene. The assessment was therefore made within materially different circumstances and cannot be said to disregard the reasoning behind the Extant Permission.

7. The officer report sets out the relevant policies which encompass the CLP. On this basis, it is not clearly evident that the Council failed to assess the scheme against the development plan as a whole. The case law¹ and the appeal decisions² referenced by the applicant respectively relate to a different development plan and the application of a different part of Policy 3 in quite different circumstances. On this basis, I do not agree that they cast doubt as to the reasonableness of the Council's application of Policy 3 in this case.
8. Overall, whilst it is fair to say that the officer report could have provided a more comprehensive assessment of the appeal proposal, there is no clear basis to conclude that, had the Council approached things differently, planning permission would have been granted.
9. Whilst Policy 7 is not cited within the reason for refusal, the CLP is clear that its policies are to be read together. In this case, the scheme's identified conflict with Policy 3 logically led to its consideration against Policy 7. As such, the reliance the Council placed upon Policy 7 during the appeal does not constitute the introduction of a new reason for refusal and was not unreasonable.
10. The officer report clearly assesses the effects of the proposal on the SAC, applies the relevant Policy 22 of the CLP, and concludes that, by reason of its small scale, the proposal would not have '*any meaningful impact*'. This is in direct contrast to the Council's position at the appeal, where likely significant effects and the need for mitigation were identified. The Council's statement refers to two intervening appeal decisions which regard habitats assessment in relation to applications for permission in principle. However, they do not justify the Council's change in opinion because it is evident that the planning officer was already aware of the need for, and indeed carried out, an assessment.
11. However, the applicant was also aware of the likelihood of a detrimental effect upon the SAC before the appeal. The applicant's Planning Statement refers to the necessity for this issue to be resolved at the decision stage and raises the prospect of a legal agreement to secure necessary mitigation. As such, whilst there is no reasonable explanation for the Council's change in position on this matter, it did not directly lead to costs at the appeal that can be conclusively considered unnecessary.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified.

Matthew Jones

INSPECTOR

¹ Chichester DC v (1) Secretary of State for Housing, Communities and Local Government (2) Beechcroft Land Ltd

² Appeal Refs APP/D0840/W/17/318472 and APP/D0840/W/17/317729