
Costs Decision

Hearing Held on 3 February 2021

Site visit made on 4 February 2021

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

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3267027 The Stables, Golberdon Road, Pensilva, Liskeard PL14 5RH

- 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 Cornwall Council for a full award of costs against Mr J & Mrs R Carter.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of agricultural dwelling.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Procedural Matters

2. The Applicant submitted a claim for costs verbally at the hearing and provided a written copy of that costs claim as part of the hearing. The Appellants costs response was provided verbally at the hearing. The Applicant had the opportunity to consider the Appellants' response and provide rebuttal comments at the hearing.

Reasons

3. Planning Practice Guidance (the PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The PPG states that awards against Appellants may be either procedural, in respect of behaviour in relation to completing the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Council is seeking a full award of costs in relation to substantive matters.
5. The Applicant claims that the Appellants pursued an appeal of an application that was clearly contrary to local and national planning policy. In this regard, the PPG makes clear the types of behaviour which may give rise to a substantive award of costs against Appellants and, amongst other things, this includes where "the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence".

6. The Council have put it to me that the appeal scheme would clearly conflict with Policy 7 of the Cornwall Local Plan Strategic Policies 2010-2030 and paragraph 79 of the National Planning Policy Framework (the Framework) with regards to the essential need for a rural worker to reside permanently at the site. In this respect, the Council referred to guidance contained within the PPG and within the Procedural Guide, Planning Appeals – England, as to the need to demonstrate a functional requirement to be present at the site and the need to demonstrate that the rural enterprise would be viable in the foreseeable future. The Council further provided evidence in support of the need to demonstrate such requirements by reference to recent appeal decisions¹.
7. Against this, the Appellants' Representative maintained that in order to justify a dwelling at the appeal site, it is only necessary to demonstrate an intention to engage in farming activities at the site with reference to the Council's document concerning 'Supplementary Questions to be answered in connection with an application for Planning Permission to erect Agricultural/ Horticultural/ Forestry or other occupational Dwelling'.
8. As will be seen from the appeal decision, I concur with the Council that, while intention to engage in farming activity is an important consideration, it is clear from National and Local Planning Policy, including advice contained within the PPG and the Procedural Guide, Planning Appeals – England, that it will be necessary to demonstrate a functional need to be at the site and that evidence of viability be provided in support of such planning applications. It will also be seen from the appeal decision that no substantive evidence regarding viability was provided and that there was clear evidence on behalf of the Council that the levels of livestock at the holding would not be sufficient to justify a new dwelling at this location.
9. In this regard, I find the Council Officer's Report and the Council's appeal statement to have been well constructed and comprehensive in terms of why the Council did not consider that the appeal proposal would accord with the policies of the development plan or the provisions of the Framework.
10. Despite the comprehensive nature of the Council's submissions and evidence, the Appellants have not provided sufficient information as to why there would be a need to have a permanent presence at the site, nor any substantive evidence as to the likelihood of the enterprise remaining viable for the foreseeable future. In this respect, it was clear from the Appellants Representative's verbal submissions at the hearing that current guidance and national policy had been disregarded and the appeal submitted on the basis of general assertions concerning intention, rather than being based on the evidence which national policy and guidance confirms as being reasonable and which is required.
11. Whilst I have sympathy for the Appellants with regards to their desire to be present at the site permanently and acknowledge their dedication to the care of their animals, it would not be appropriate, proportionate or equitable to disregard current Local and National Planning Policy in favour of part of a single sentence contained within the abovementioned questionnaire. As noted in the appeal decision, the questionnaire referred to by the Appellants is clear in relation to the evidence and information needed to support such applications

¹ Notably Appeal Decisions: APP/D0840/W/19/3241270 and APP/D0840/W/20/3253885

and, in this regard, is consistent with the advice contained within National Planning Policy and Guidance.

12. Given the information contained within the Council Officer's Report and the details provided by the Council's Land Agent with regards to the need for a rural worker to be at the site most times, and by reason of the lack of any substantive evidence of viability, in my view, I am not satisfied that the appeal had a reasonable prospect of succeeding as the proposed development was clearly not in accordance with the development plan and no compelling evidence or other considerations were identified which indicated otherwise. This constitutes unreasonable behaviour with regards to substantive matters and the Council has thus been faced with the unnecessary expense of defending their decision at appeal. A full award of costs is therefore justified.

Costs Order

13. 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 Mr J & Mrs R Carter shall pay to Cornwall Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The Council is now invited to submit to the Appellants, to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

A Spencer-Peet

INSPECTOR