



Costs Decision

Site visit made on 25 January and 2 March 2021

Hearing held on 3 February 2021

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3248199 Land off Tregenna Lane, Camborne TR14 7QU

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972 as amended, section 250(5).
 - The application is made by Mr J. Mitchell of Robertson Development Ltd. against Cornwall Council.
 - The appeal was against the refusal of Cornwall Council to grant planning permission for development described on the application form supporting application Ref PA19/02687, dated 21 March 2019, as '23 dwellings, including affordable housing, landscape, access and associated infrastructure'.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²
3. The appellant's case for a full award of costs references elements of the PPG which set out various types of behaviour that may give rise to a substantive award of costs against a local planning authority.³ His principal contention is that the Council's decision to refuse permission for planning application Ref PA19/02687 is logically irreconcilable with pre-application advice (Ref PA19/00051/PREAPP). He states that the planning committee paid 'no regard to the fact that pre-application advice was sought and provided a positive response about the proposals'.
4. The appellant's argument also raises some procedural points as to how the Council handled application Ref PA19/02687; the proposal was presented to planning committee on three occasions and a decision deferred, or decision to refuse arrived at, on changing grounds (despite that in each instance the proposal was recommended by officers for approval). In section 12 of the appellant's application for costs the appellant further sets out several nuanced

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

³ Noting PPG Reference ID: 16-049-20140306 in that context.

arguments regarding the reasonableness of the Council's substantive opposition to the proposal.⁴

5. In brief the appeal concerned a proposal for 23 homes next to a site with extant consent for 94 homes (both intended to be undertaken by Robertson Development Ltd.). That context and the history to the site is detailed in paragraph 17 of the associated appeal decision. In assessing that appeal, I found that the proposal accorded with relevant provisions of the development plan and that permission should be granted. However that is a separate finding on the planning merits of the scheme, which, in itself, does not indicate whether or not unreasonable behaviour occurred.
6. I acknowledge that the tone of pre-application advice is supportive of such a scheme. However it is not unconditionally so; reference is made to there being 'very little supporting information' in terms of design and visual impact, and that it would be essential that 'a high quality design is achieved'. I set out in paragraph 24 of the associated appeal decision that an assessment as to whether a proposal integrates appropriately with its surroundings is inherently reliant on planning judgement. In that context, for the Council to ultimately refuse application Ref PA19/02687 principally on the basis that it would conflict with design policies in the development plan is not inherently contradictory with pre-application advice (or unreasonable).
7. I note how the PPG, and also National Planning Policy Framework ('NPPF'), emphasise the value of pre-application discussions. However, contrary to the appellant's position that the planning committee paid 'no regard' to pre-application engagement, there appears to be reference to that in the minutes of the West Sub-Area Planning Committee of 21 October 2019. There is also reference in the officer report presented to the subsequent committee meeting of 16 December 2019 to the scheme having been amended to reflect advice given by landscaping officers. Even if I am incorrect in that, on account of the reasoning in paragraph 6 above, and as pre-application advice is not binding,⁵ had no consideration been given to pre-application advice at Committee that would not necessarily have amounted to unreasonable behaviour in and of itself.
8. I acknowledge the appellant's frustration at how the proposal was considered at three committee meetings. However the relationship of the proposal with the neighbouring permission for 94 dwellings is intricate; it is not, in my view, unreasonable for Members to have sought clarity on various matters in that context regardless of whether or not they ultimately featured in the Council's decision notice of 14 January 2020 (including in respect of drainage, landscaping and vehicular access addressed in detail in the associated appeal decision). Reinforcing that view, I note that the dates on which application Ref PA19/02687 was considered at committee overlapped with differing proposals with the Council seeking approval for various details in respect of the neighbouring 94 dwelling scheme.
9. The five points made under section 12 of the appellant's application for costs principally relate to planning matters considered in the associated appeal

⁴ Arguments which, together, indicate that the appellant is of the view that the Council failed to substantiate reasons for refusal, thereby preventing or delaying development which should clearly have been permitted.

⁵ PPG Reference ID: 20-011-20140306.

decision, and I therefore touch on them only briefly here. In respect of point (i) it is axiomatic that a proposal may be acceptable 'in principle' but not in respect of detail (for example in terms of design). On point (iii) in my view the existence or not a five year land supply in the context of NPPF paragraphs 67 and 73 is relevant. That is insofar as arriving at a balanced conclusion in terms of the overall merits of a scheme that conflicts with elements of the development plan is concerned (as was the premise on which the Council refused permission).

10. On point (iv), again, in my view whether or not a site is allocated is relevant in terms of its status, and by extension its bearing on matters of five year supply (point iii, as above). Further the Council's decision notice states that 'the site is not allocated for development and the Council has a five year supply of housing'. On a plain reading that text is an explanatory statement rather than indicating that the Council refused permission directly on that basis. I will return to point (v) below, but that matters of design are subjective is simply a factual statement, which equally applies to the Council's assessment of the scheme as in respect of the appellant's promotion of it.
11. Section 12, point (ii) of the appellant's costs application is that 'the Planning Committee did not include highways issues in the reason for refusal yet this was the reason that they requested the application be withdrawn'. As I understand it the suggestion of withdrawal arose in the context of the second presentation of the scheme at committee on 16 December 2019.
12. That brings me back to paragraph 8 of this decision; at that juncture details of the neighbouring scheme were not approved. NPPF paragraph 108. b) sets out how planning should ensure 'safe and suitable access to the site can be achieved for all users'. Consequently on 16 December 2019 the interaction between the two sites, including in respect of access, was subject to some degree of uncertainty. The question of whether or not it was unreasonable for the Council to suggest that application Ref PA19/02687 be withdrawn is also somewhat moot as it was not withdrawn, and ultimately refused on different grounds.
13. I accept that there are certain oddities in the Council's position at appeal.⁶ Nevertheless, and returning to section 12 point (v) of the appellant's application for an award of costs, at appeal the Council has supported its case by accurate observations of the site and surroundings, considered relative to relevant elements of the development plan and of the NPPF.
14. It is furthermore a point of fact rather than subjectivity that the level of residential density proposed is significantly higher than around Tregenna Fields and Tregenna Close to the east and north of the site, and that the majority of dwellings proposed would be two storey (as opposed to adjacent properties where single storey dwellings are predominant).
15. Moreover I note that the Council has considered elements of the development plan which would lend some support to the scheme, notably policy 21 which conditionally supports increasing building density, along with other benefits

⁶ Notably paragraph 5.7 of the Council's appeal statement sets out that 'it is arguable whether the site could be considered as rounding off', whereas the policy route for that type of development was not cited in the decision notice (policy 3a of the Local Plan adopted November 2016).

associated with the scheme (in particular in paragraph 5.11 of the Council's statement of case). On the evidence before me matters of design were given some consideration at committee.⁷

16. On account of the foregoing reasoning, although I understand the appellant's motivation for applying for costs, insofar as relevant in this instance based on the evidence before me I find that no action or inaction taken by the Council amounts to unreasonable behaviour directly resulting in unnecessary or wasted expense at appeal.

Conclusion

17. Having taken account of all other matters raised, and with regard to relevant elements of the PPG, for the above reasons I conclude that an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR

⁷ As noted in the committee meeting minutes of 13 January 2020, as also raised in various representations in respect of the scheme.