The Planning Inspectorate

Costs Decision

Site visit made on 9 March 2021

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

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3264414
Land at Holmbush Road, St Austell PL25 3HQ

- 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 EG Group Ltd for a full award of costs against Cornwall Council.
- The appeal was against the refusal of planning permission for the construction of petrol filling station and linked store (Sui Generis use) and associated development.

Decision

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

Procedural Matters

2. The costs application submitted by the Applicant does not expressly state whether a full or partial award of costs is sought. However, by reason of the information contained within the costs application, I have interpreted the application as being as an application for a full award of costs, and I have considered the costs application on that basis.

Reasons

3. The Planning Practice Guidance (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.

4. The Applicant submits that the Council has acted unreasonably with regard to the procedure and substance of the application and that as a result the Applicant has incurred unnecessary and wasted costs.

5. In relation to the substance of the matter under appeal, the Applicant has, broadly, put it to me that the Council has acted unreasonably by 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.

6. In this respect, the Applicant maintains that it was unreasonable to include matters of highway capacity and specifically in relation to the inclusion of wording relating to 'long queues' as provided within the Council's decision notice. Furthermore, it has been put to me that there is a realistic fallback position in the form of extant permission which proposes the same access

arrangement to the site, and that therefore there is no proven issue with the proposed access arrangement in relation to the appeal scheme.

7. However, it will be seen from the appeal decision that whilst I did not agree with the Council as to whether the extant permission would represent a realistic fallback position, and while the proposed access arrangements were the same, by reason of the increased level of new trips generated by the appeal scheme, the appeal proposal would have a significantly greater adverse effect on highway safety than when compared to the extant permission. The Applicant maintains that the Council have introduced matters of highway capacity, but it is apparent from the evidence and submissions before me that the concern was not based on the effect of the proposal with regards to capacity, but rather that the harm identified would relate to the safety of users of the highway and associated footway.

8. In light of the above and the reasons outlined in the appeal decision, I do not find that the Council prevented or delayed development that should have been clearly permitted and, consequently, I do not find that the Council have acted unreasonably in this regard.

9. The Applicant further maintains that the Council failed to engage positively and proactively and failed to manage the consultation process to enable the Applicant to address consultation responses. In this respect, the PPG makes it clear that a Local Planning Authority is at risk of an award of costs if it behaves unreasonably with respect to the procedure of the matter under appeal by a lack of co-operation with the other party and delay in providing information or other failure to adhere to deadlines.

10. It has been put to me by the Applicant that, following receipt of the Highway Authority's comments in respect of the appeal scheme, a meeting was requested with both the Council and the Highway Authority with the intention to discuss and resolve issues raised by the statutory consultee, but that the Council and statutory consultee did not initially respond to the request and later refused to attend a video call meeting. The Applicant maintains that such a meeting would have addressed the highway safety concerns.

11. However, it is apparent from the submissions and evidence before me that the Applicant's position was that given the proposed access arrangement was the same as would be for an existing extant permission, it had been proven that the access arrangement would not result in any harm with regards to highway safety. As noted in the appeal decision, this position fails to consider that the appeal proposal would result in a significantly greater number of new trips to and from the site when compared to the previously permitted planning application. Consequently, and in light of the reasons given in the appeal decision, it is clear that the Highways Authority's concerns could have only been addressed by amending the proposed access arrangement which would have resulted in a different scheme for which further opportunity for consultees would have been needed to be provided.

12. The National Planning Policy Framework advises Council's to work positively and proactively with Applicants. To this end, I understand the Applicant's frustrations regarding communication and opportunity afforded to resolve the matters raised by the statutory consultee. However, in this case, based on the evidence before me and on the Council's reasons for refusing the application, I am not persuaded that further discussion of the matters raised by the Highway

Authority would have been enough to overcome all the Council's concerns. Consequently, I do not find that the Council have acted unreasonably with regards to this procedural matter.

Conclusion

13. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. The application for a full award of costs is, therefore, refused.

A Spencer-Peet

INSPECTOR