
Costs Decision

Site visit made on 11 March 2021

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

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3263587 Land adjacent to Chyryn, Harris Mill, Illogan, Cornwall TR16 4JG

- 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 & Mrs R Holborn for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for outline planning for new dwelling.
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Decision

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

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 or wasted expense in the appeal process¹.
3. In this regard, the Applicants maintain that the Council has acted unreasonably by preventing development from proceeding that should have been permitted and, in this respect, have misapplied adopted policies from the development plan. The PPG² indicates that Local Planning Authorities will be at risk of a substantive award of costs being made against them if, amongst other things, they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The Planning Committee decided to refuse the application contrary to the advice of their professional officers who had produced a written report analysing the principle of residential development at the appeal site with regards to both local and national planning policy. Whilst Local Planning Authorities are not bound to accept the recommendations of their officers, as noted above the PPG provides that Councils are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. As will be seen from the appeal decision, there were substantive reasons for allowing the appeal. Whilst it was noted that the officer's report considered a

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

number of policies that make up the development plan, the Council's statement focuses on the appeal proposal's compliance with only a limited number of policies that would apply in this instance and relies solely on the reason for refusal set out in the Decision Notice.

6. The Council's statement provides no substantive reasoning or evidence to justify why the Planning Committee formed a contrary view to its professional officers. Furthermore, by solely focusing on the scheme's compliance with only individual policies or specific criteria contained within those policies, they have failed to consider the development plan when taken as whole.
7. In this regard, the evidence before me indicates that the Council did not sufficiently assess the proposal against those parts of Policies 3 and 21 of the Cornwall Local Plan Strategic Policies which concerns the use of previously developed land adjoining the settlement, nor considered the proposal's compliance with Policy PH4 of the Illogan Parish Neighbourhood Development Plan or Policy 1 of the Cornwall Site Allocations Development Plan Document. While it is acknowledged that interested parties did not consider the land to be PDL, it is apparent that the Officer's report did correctly identify that the site was garden land outside of a built up area and therefore was not excluded from the definition of PDL as described within the National Planning Policy Framework.
8. The consideration of planning applications and appeals involves matters of judgement that are, at times, finely balanced. In this instance, the Council have concluded that the appeal proposal would not be in a suitable location for housing by reference to only parts of the development plan, but have failed to justify how the propose development would conflict with the development plan when taken as whole.
9. As will be seen from the appeal decision, whilst the appeal proposal would not accord with certain policies of the Illogan Parish Neighbourhood Development Plan, it is apparent that the appeal scheme would comply with the development plan when taken as a whole. Given that it appears that the Council have not considered the proposal against those parts of the development plan that supports new dwellings at locations such as the appeal site, in my view the Council have misapplied adopted policies of the development plan and thereby have prevented development from proceeding that should have been permitted.
10. I find that the Council has failed to consider all the relevant policies of the development plan and have failed to substantiate their reason for refusal, in the face of advice from its professional officers that the issue of the location of the proposed dwelling was acceptable. For the reasons above and for the reasons set out in the appeal decision, the Applicants should not have needed to deal with this reason for refusal and have incurred unnecessary expense in doing so.

Conclusion

11. For the reasons outlined above, I conclude that the Council has acted unreasonably, and that the Applicants have incurred unnecessary and wasted expense in the appeal process. Accordingly, a full award of costs is justified in this instance.

Costs Order

12. 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 Cornwall Council shall pay to Mr and Mrs R Holborn 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.
13. The Applicants are now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Spencer-Peet

INSPECTOR