

Costs Decision

Site visit made on 26 March 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Costs application in relation to Appeal Refs: APP/D0840/W/20/3246452 and 3246454

Land at Roseworthy Hill, Camborne, Cornwall

- 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 Quora (Camborne) Ltd for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for a 'proposed mixed use development comprising three A1 retail (food and non-food) units and petrol filling station (including A1/A3 uses) associated parking, access and landscaping arrangements' and a 'proposed coffee shop with drive thru (to be developed alongside the wider mixed use retail and petrol filling station development) associated parking, access and landscaping arrangements'.
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Decision

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

Reasons

2. National Planning Practice Guidance (NPPG) 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 or wasted expense in the appeal process.
3. Throughout the appeal process the two appeals have been considered on the basis that they comprise one proposed development. They are inextricably linked, for the reasons given in paragraph 4 of the Appeal Decision, and the costs application will be considered on the same basis.
4. Members of the Planning Committee are not bound by the recommendation of the Council's Planning Officer and were entitled to reach their own conclusions on the proposed developments taking into account all relevant factors, including the views of third parties. The weight given to relevant material considerations by the Planning Officer in the Committee Report is a matter of planning judgement and Members are also required to make such judgements. They make those judgements on the basis of all evidence put before them; the Committee Report being only a part of that evidence. That Report, whilst recommending approval, acknowledged that "...this is a finely balanced case".
5. On the first issue, retail impact, there is general agreement between the main parties on the extent to which the principle proposed development would affect trading, and income, of existing town centre retail operators. But it is also recognised that the economy of the town centre is fragile. The overall impact on

the economy would be a reduction of about 11% and, though the effect on the Aldi store would probably not affect its viability, a reduction of about 5% in the income of comparison goods shops could have a significant adverse effect on their profitability. Members clearly took into account all views and exercised planning judgement in reaching the conclusion that the proposed developments would have a significant adverse effect on the viability and vitality of the town centre. This was a judgement that they were entitled to reach, particularly given their consultants' view on the fragility of the town centre, and that judgement has been substantiated in the Council's appeal statement.

6. On the second issue, landscape impact, the Appellant's case is that the initial visual impact of the proposed development would be reduced over time as landscaping matures, to the extent that there would not, ultimately, be any significant effects. But the Design and Access Statement, which was before the Planning Committee, states that shrub planting "...will provide a strong and bold planting statement to the southern and eastern boundaries whilst still allowing visual permeability through to the store fronts". If visual permeability is to be retained across the site then it is a matter of subjective judgement as to whether, initially and in the future, the proposed developments would have a significant adverse visual effect on the character and appearance of the area. The judgement that it would, reached by the Planning Committee, has been substantiated in the Council's appeal statement.

7. On the third issue, strategic policy, it is the conclusion on the first issue that principally drives the harm to strategic policy alleged by the Council. The Council alleged significant harm to the viability and vitality of the town centre and the CSADPD encourages the delivery of retail development on town centre or edge of town centre sites. More importantly, the CSADPD does not allocate the appeal site for retail use. In these circumstances it was logical, and not unreasonable, for the Council to conclude that the proposed development conflicts with strategic policy.

8. The Planning Committee did not act unreasonably in reaching their conclusions on all the evidence that was presented to them, including the Officer Report. Though there has been general agreement between the main parties, with regard to an objective analysis, on the financial impact of the proposed development on the town centre, other factors have led the Council to conclude that the impact would be significant whilst the Appellants maintain that it would not be significant. It is, in this regard and on such a subject, inevitable that subjectivity has its part to play in reaching a planning judgement. Subjectivity also has its part to play in reaching conclusions on visual matters, such as the character and appearance of the landscape.

9. The Council has acknowledged that the reasons for refusal included erroneous references to CLP policies but this has not resulted in the Appellants wasting any expense. The Council did not act unreasonably in refusing the applications for the reasons stated on the decision notices, and they have adequately substantiated those reasons in their appeal statement. The application for an award of costs has thus been refused.

John Braithwaite

Inspector