



Costs Decision

Site visit made on 21 April 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2021

Costs application in relation to Appeal Ref: APP/D0840/W/20/3260932 Rosehill Nurseries, Landulph, Saltash PL12 6NF

- 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 West Country Land and Developments.
 - The hearing was in connection with an appeal against the refusal of planning permission for construction of 29 dwellings (15 Affordable and 14 Open Market), Shop & Flat (A1) and Associated works.
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Decision

1. The application is refused.

The submissions for Cornwall Council

2. The Council provided a written submission during the hearing which focuses on the legitimacy of the arguments and the timeliness of the evidence put forward by the applicant. This was added to at the Hearing orally with concerns about the content and presentation of the applicant's viability report. The Council also considers that the applicant has misunderstood the requirements of the development plan as to the delivery of AH and has failed to respond to the AH need in Landulph Parish despite ample time to do so.

The response by West Country Land and Developments

3. The applicant has acted in good faith and on the advice of the Council from the outset. Arguments about PDL and the general acceptability of the site for housing development are not new to the appeal, it is just that the Council recommended that the scheme come forward as a RES. The proposal has been submitted based on a legitimate interpretation of the development plan and national planning policy, and the arguments raised are ultimately for the Inspector to decide.

Reasons

4. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary expense in the appeal process.
5. There is clearly a great deal of past dialogue between the applicant and the Council with regard to the development potential of the appeal site. However, none of this history provides a clear basis to conclude that different actions on behalf of the applicant could have allowed the appeal to have been avoided.

6. Whilst reference was made to Policy 8 of the CLP, it did not form a principle aspect of the applicant's case. The applicant's suggestion that the scheme be amended using planning conditions was one that was entitled to be made. Policy 9 of the CLP and the SPD require that RESs start at 100% AH, but they also allow this to be reduced subject to financial viability, which is the argument made by the applicant in this case. In addition, the SPD provides scope for AH within RESs to address AH needs beyond the parish level under certain circumstances. The divergence in opinion as to the level of AH need in Landulph Parish was based on legitimate interpretations of the evidence.
7. Whilst the viability report was only submitted at the appeal, it responds to the relevant reason for refusal and the Council had the opportunity to engage with its content within the appeal process. It provides adequate financial detail to enable the Council an informed opportunity to respond. The evidence presented by the Council in reply was not substantive in any case. Ultimately, the accordance or otherwise of the scheme with the development plan was not a clear-cut issue that was beyond discussion, and the lines of argument pursued by the applicant at the appeal were both reasonable and valid.
8. The 50-page document submitted by the applicant the day before the Hearing did not allow a great deal of time for response. However, the evidence it contains pertains to the main areas of dispute and is for the most part information that the Council would or should have already been aware of. The letter setting out an offer for the affordable housing by a registered provider postdates the submission of the appeal. The applicant's document about development volumes was a relatively small piece of work which simply served to amplify arguments the applicant was already putting forward. The Council's various responses to this evidence were explored within the body of the discussion over the course of the Hearing.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not justified.

Matthew Jones

INSPECTOR