
Costs Decision

Site visit made on 25 August 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th October 2021

Costs application in relation to Appeal Ref: APP/D0840/W/21/3274538 Hembal Lane Farm, Hembal Road, Trewoon PL25 5TD

- 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 T Lansdowne (Cory Lansdowne Estates) for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for mixed residential development, affordable and open market.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that 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 process.
3. The application contends that the Council acted unreasonably through:
 - a) Rejecting previously established findings regarding the identified local need for affordable housing, and effectively introducing an additional reason for refusal on this issue;
 - b) Relying on general opinion, that was not supported by technical assessment, regarding highway and traffic impacts; and,
 - c) Failing to produce evidence to substantiate the third reason for refusal, relating to foraging bats.
4. With regards to the first issue, the PPG advises that Councils are at risk of an award of costs if they introduce fresh and substantial evidence at a late stage, necessitating extra expense for preparatory work that would not otherwise have arisen, or by introducing a new reason for refusal.
5. It was common ground that the acceptability of housing on the site relied on compliance with the exception site criteria set out in Policy 9 of the Cornwall Local Plan Strategic Policies 2010-2030. One of these criteria is that the primary purpose of the development is to provide affordable housing to meet local needs. At the time of the application, this matter was quite finely balanced, with the Council's Affordable Housing Officer not, initially, supporting the proposal, due to lack of evidence to show there was sufficient need for the

number and mix of units proposed. Although no objection was raised to the revised scheme that was determined by the Council, the Housing Officer's comments referred to the need being "*more marginal*" than when a previous scheme was permitted. Furthermore, the delegated report concluded that the need was "*not considered to be particularly high*". Consequently, the Council's conclusions on this issue were not entirely unequivocal.

6. It would, therefore, have been reasonably foreseeable, that some evidence relating to the scale and nature of the local need for affordable housing would have been necessary, as part of the appellant's submissions, to demonstrate compliance with Policy 9 of the Local Plan. The Council's statement provided an up to date and detailed analysis of the local housing need, which explained why its conclusions on this issue were finely balanced at the time of the decision. However, it stopped short of introducing a new reason for refusal, concluding that "*the proposed development has the capacity to result in an excess of affordable housing*", rather than clearly stating that it would.
7. Housing need figures are fluid, and it was appropriate for both parties to provide up to date evidence on their positions on this issue at the appeal. Consequently, I do not consider that it was unreasonable for the Council to provide updated figures, together with an analysis of why it considered the housing need underpinning the proposal as an exception site was finely balanced.
8. With regards to the second issue, the PPG advises that Councils are at risk of an award of costs if they make vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The Council's highway reason for refusal was supported by the expert advice of the Highways Officer. Whilst this advice did not refer to published standards or policy documents, it clearly set out the points of concern as being firstly, the potential for conflict between vehicles and other road users due to the narrowness of the access road, and, secondly, the likelihood of highway danger due to the inability of the junction to accommodate two-way traffic movements.
9. The Council's appeal statement expanded on these concerns, with specific reference to the technical standards advised in Manual for Streets. The Council's defence of this reason for refusal was, therefore, clearly and precisely explained, and supported by expert advice. The appellant's highway evidence did not seek to demonstrate that the submitted access arrangements would be safe or suitable, but instead introduced alternative proposals. As these had not been the subject of proper consultation, I declined to consider them as part of the appeal.
10. An appeal is not the appropriate forum for evolving a development proposal. Therefore, whilst it would be good practice for the Council and the Highway Authority to work proactively with the appellant to find a solution to the highway issue, I do not find that it was unreasonable, in the appeal process, for them to focus on the scheme that had been determined by the Council.
11. With regards to the third issue, the PPG advises that Councils are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal. The Council's statement provided little evidence on the third reason for refusal. However, the delegated report fully and clearly set out the rationale behind it. It was not, therefore, necessary to duplicate this evidence

in the statement. It is not unusual for Councils to rely entirely on their delegated report in defence of their decision at appeal, indeed this can reduce unnecessary repetition of material. Whilst I arrived at a different conclusion on the derogation tests, it was not unreasonable for the Council to rely on the evidence in its delegated report on this issue.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR