
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: 8th November 2021

Costs application in relation to Appeal Ref: APP/D0840/W/21/3276587 Land adjacent to Heckberry Barn, Vollards Lane, Hatt PL12 6PT

- 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 Richard Andrews for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for residential development of 8 dwellings (4 open market and 4 affordable rent).
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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 essentially relies on the fact that the proposals had evolved through lengthy discussions with Council Officers, but that their recommendation of approval was not accepted by Members. Consequently, it is argued that the Council has delayed development that should have been permitted, without offering any objective analysis about the impact of the proposals.
4. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application. However, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
5. It is good practice for Councils to offer pre-application advice on planning proposals. Indeed, the PPG indicates that Councils are at risk of an award of costs if they refuse to enter into such discussions where they could avoid the need for an appeal, or narrow the issues in dispute. However, such discussions are on an informal basis, usually without the benefit of public consultation and, consequently, cannot bind the Council to a formal decision on the subsequent planning application. In this case, I note that the discussions took place over a protracted period, during which national and local planning policy was in a state of flux. Members had to make their decision based on policies and advice that pertained at the time of determination. They were not bound to accept their

Officers' advice, and the fact that they did not, does not represent unreasonable behaviour, in itself, provided that their reasons for refusal could stand up to scrutiny on the planning merits of the case.

6. The Council's reasons for departing from their Officers' advice were clearly stated in the reasons for refusal on the decision notice. The PPG advises that Councils will be at risk of an award of costs against them if they fail to produce evidence to substantiate each reason for refusal, or make vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The Council provided a comprehensive statement, which gave a clear and coherent explanation in support of its position, with reference to relevant policies. The evidence provided was detailed, specific and accurate. The Council has, therefore, fulfilled the requirement to provide evidence to substantiate each reason for refusal, which included an objective analysis of all the issues.
7. The PPG advises that Councils will be at risk of an award of costs against them if they delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations. I concluded that, on its overall merits, the proposal complied with the development plan and national policy. However, there was a degree of subjective judgement involved in determining whether the site was well-related to the built form of the settlement, the impact of the proposals on the character and appearance of the countryside, and whether the composition of the dwellings differentiated the affordable units. Whilst I found differently on all these matters, the issues were not so clear that it was unreasonable for Members to have arrived at an alternative conclusion.
8. The PPG advises that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR