



Costs Decision

Hearing Held on 7 December 2021

Site visit made on 7 December 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Costs application in relation to Appeal Ref: APP/D0840/W/19/3242850 Land west of Trevoole Farm, Botetoe Hill, Trevoole, Cornwall TR14 0RN

- 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 S Moore for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the change of use of land to a 2 no. pitch Traveller pitch site including 2 no. mobile homes, 2 no. dayrooms, 2 no. touring caravans, 1 no. septic tank, hardstanding, and associated works.
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Decision

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

The submissions for Mr S Moore

2. The applicant seeks a full¹ award of costs. The application was made in writing before the hearing and with additional oral submissions following the planning case made by the Council during the hearing. The application is advanced on the basis that the Council has prevented or delayed development which should clearly have been permitted and failed to provide evidence to substantiate each reason for refusal on appeal setting out vague, generalised or inaccurate assertions, unsupported by any objective analysis.
3. It is said that with the Planning Report setting out a clear case for approval, the Local Planning Authority's (LPA) efforts to defend the subsequent reason for refusal was fatally flawed. For instance, the applicant explains that reference is made in the LPA's appeal submissions to the scheme being unacceptable because the site is in an area of open countryside outside of any large settlement. However, the threshold and test in the Planning Policy for Traveller Sites (PPTS) regards a site being away from existing settlements, rather than large settlements.
4. It is explained that the LPA's evidence on character and appearance is restricted to a single paragraph and, in the light of the Planning Report and the Statement of Common Ground, this does not stand up to scrutiny. The implication is that the site should not be visible, and this is clearly not what the various policies require. Furthermore, the case is made that any perceived harm to the character and appearance of the area would be clearly outweighed by the failure to deliver sufficient Gypsy and Traveller pitches against Local Plan targets and the failure of the policy over a sustained period as a whole.

¹ A partial award is sought if a full award is not made.

5. In terms of the access to services and facilities, the numerical distance requirements are set out in Policy 11 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan). With compliance with these distances agreed, they are unarguable and therefore the case made in the LPA's written appeal statement was not applicable to the policy test. Indeed at the hearing the LPA accepted that the distance and policy tests were met and the requirements of Policy 11 of the Local Plan was complied with. If this policy compliance had been accepted earlier then the costs associated with appeal statements and hearing time could have been avoided.
6. Furthermore, the applicant argues that the LPA's assertions that the distance to services will somehow perpetuate social exclusion is simply fanciful. Additionally, in terms of the evidence given at the hearing, although the LPA said that it had encouraged the delivery of Gypsy and Traveller pitch provision, it produced no substantive evidence to support this assertion.
7. Also the applicant makes the case at the hearing that one of the witnesses appearing on behalf of the Council introduced additional arguments such as the adverse effects of the scheme on biodiversity, heritage and highway safety that were not supported by expert or detailed evidence. Such arguments contradicted points made by the Council's other witness, the agreed Statement of Common Ground and were matters that did not appear in the reason for refusal. This led to additional hearing time which could have been avoided.
8. The applicant argues that the approach of the LPA in all these respects demonstrates unreasonable behaviour than resulted in unnecessary and wasted expense in the appeal process.

The response by Cornwall Council

9. The LPA has responded in writing and orally at the hearing. It is explained that while the Council's decision was contrary to the advice of its officers, the elected Councillors are not bound to accept such a recommendation and Members are often able to provide a more considered assessment due to their local knowledge.
10. The case is made that the LPA's statement examines the policy background, particularly the Development Plan, including the Crowan Parish Neighbourhood Development Plan 2018-2030 and examines the relevant material considerations, including the Landscape Character Study.
11. The LPA believe that its statement described the site and surroundings and assessed the extent to which the proposal accorded with the settlement policies of the development plan. It is explained that the statement acknowledges the need for pitches in Cornwall, makes an assessment against the PPTS and assesses the proposal in visual terms. In addition there is a consideration on the accessibility of the site to facilities and services and makes a judgement on the likelihood of alternative travel to those settlements.
12. In terms of the additional matters raised at the hearing, the LPA make the case that these were in the context of a general discussion and were matters supported by the Parish Council and local residents. In terms of the LPA's position in relation to Policy 11 of the Local Plan at the hearing itself, it is necessary to consider the scheme against the development plan as a whole and

there are other policies referenced in the reason for refusal that are not satisfied.

13. Taking all these matters into account, the LPA considers that it has exercised its development control responsibilities responsibly, taking into account all the relevant policies and other material considerations and came to a logical and reasoned decision. The defence of that position at the appeal was therefore justified.

Reasons

14. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
15. It is clearly open for a Committee to take a different view to the officer recommendation in a planning report. However, the LPA as a whole is required to produce adequate evidence to substantiate its case at appeal. The Guidance explains as examples of unreasonable behaviour that may give rise to a substantive award of costs against a LPA, the failure to produce evidence to substantiate each reason for refusal on appeal and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
16. The Planning Report set out a detailed assessment of the compliance of the proposal with development plan policies. This includes an analysis of the criteria of Policy 11 of the Local Plan which establishes the specific approach to dealing with Gypsy and Traveller development. Criterion 3 of Policy 11 sets a numerical distance within which it is considered a site has reasonable access to local facilities. In this case the evidence which had been submitted as part of the application established that the site was well within this distance to such facilities and that a bus service ran along the road in front of the site.
17. I consider that the LPA in its appeal statement made vague and generalised assertions to seek to demonstrate that the proposal did not comply with this criterion. Subsequently, in discussion at the hearing, it accepted that, having regard to the precise wording of the criterion, that the scheme was policy compliant in this respect. As a consequence, the LPA then accepted that the development would comply with Policy 11 of the Local Plan as a whole. Given the wording of the locational requirements to access services and facilities in Policy 11, with the factual aspects of the distances to neighbouring settlements and bus route detailed in the application and Planning Report, it was unreasonable to refuse the application in this regard. This led the appellant to have to address these matters at the appeal stage. This could have been avoided if the LPA had not refused the application with reference to this policy in the first place or at least reviewed its case and accepted the compliance with Policy 11 at an earlier stage of the appeal process.
18. The reason for refusal also sets out that the form of the development and its location would likely perpetuate social exclusion experienced by Gypsies and Travellers. The appeal submissions from the LPA did not explain in a cogent or evidenced way why, with the provision of a settled base, this would be likely. This was especially the case when the access to services and facilities was accepted at the hearing to be policy compliant. The inclusion of this objection in

the reason for refusal, and the subsequent lack of any convincing evidence to support this contention, was unreasonable.

19. Also, the raising by one of the Council's representatives of other issues at the hearing, such as those regarding heritage, biodiversity and highways, introduced subjects that were not within the reason for refusal and were not consistent with the case made in the written submissions of the LPA. However, with the heritage issues this took up very little time at the hearing and therefore did not lead to a material level of wasted expense. In the case of biodiversity and highways, these issues had also been identified by local residents and/or the Parish Council and were raised by these parties during the hearing and therefore formed a part of the overall discussion of the wider planning issues. In these circumstances, the raising of these planning issues by the Council's representative did not lead to additional time at the hearing and therefore there was no wasted expense in the appeal process.
20. Finally, in terms of the main issues raised in the applicant's costs application, is the issue detailed in the reason for refusal regarding the harm to the character and appearance of the area. In this regard, the Planning Report had identified some landscape harm and while the LPA's written statement was limited on this issue, more substance to the LPA's case was provided at the hearing. Explanations as to why, in the LPA's view, the scheme would harm the identified characteristics of this Local Character Area and how the development would create a suburban form of development were sufficiently articulated and then related to development plan policies. While my assessment of this matter is different to the LPA's, the arguments regarding harm to the character and appearance of the area were not without some merit.
21. Whether this harm that the LPA considered would occur to the area, and the associated conflict with development plan policies, would be outweighed by other matters such as the lack of delivery of Gypsy and Traveller pitches and the alleged failure of policy over a sustained period, is a matter of planning judgement. I do not consider that the LPA could be judged to be unreasonable in coming to a different conclusion on the planning balance with these various considerations. Consequently, there was a sufficient case made on the effect of the development on the character and appearance of the area such that this does not amount to unreasonable behaviour. As a result, the appeal could not have been avoided.
22. Drawing these matters together, the LPA made an adequate case to explain the concerns in respect of the first part of the reason for refusal concerning the alleged harm to the character and appearance of the countryside. This related to the second main issue identified in the planning appeal decision. This was supported by sufficient evidence, involved planning judgement and does not constitute unreasonable behaviour. An award of costs in this respect is not justified.
23. However, for the reasons explained above, the next section of the reason for refusal, where the case made by the LPA alleged the inaccessible location away from any defined settlement and community and infrastructure facilities would result in a poor form of development that would also be likely to perpetuate social exclusion experienced by Gypsies and Travellers, was vague and not supported by sufficient or cogent evidence at the appeal. This relates to the first main issue identified in the planning appeal decision. This constitutes

unreasonable behaviour and this unreasonable behaviour also extends to the LPA pursuing its contentions regarding the conflict with Policy 11 of the Local Plan which it was unable to sustain at the hearing. Pursuing these unreasonable arguments required the applicant to address these matters leading to unnecessary and wasted expense in the appeal process. An award of costs is justified in these respects.

Conclusion

24. In the light of the above analysis, I have found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, in the specific circumstances identified above, has been demonstrated and that a partial, and not a full, award of costs is justified.

Costs Order

25. 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 S Moore, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal process in addressing the Council's concerns with those parts of the reason for refusal which made reference to the alleged inaccessible location away from any defined settlement and community and infrastructure facilities would result in a poor form of development that would also be likely to perpetuate social exclusion experienced by Gypsies and Travellers and in addressing the concerns raised in respect of Policy 11 of the Local Plan, such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is 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 an agreement as to the amount.

David Wyborn

INSPECTOR