
Costs Decision

Site visit made on 16 August 2022

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Costs application in relation to Appeal Ref: APP/D0840/W/22/3292433 Land South West of Penwinnick Farm, Penwinnick Road, St Agnes, Truro, 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 Westcountry Land (St Agnes) Ltd for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for development described as a full detailed application for a cross subsidy exception site residential development comprising 39 dwellings (22 affordable), access roads and landscaping.
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Decision

1. The application for a full award of costs is refused.

Preliminary Matters

2. The application for costs does not expressly state whether the Applicant is seeking a full or partial award of costs against the Council. However, from the information and submissions before me, it appears that the Applicant is seeking a full award of costs and I have determined this Costs Decision on that basis.

Reasons

3. 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 caused the party applying for costs to incur unnecessary expense in the appeal process.
4. The PPG states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Applicant is seeking an award of costs in relation to substantive matters.
5. The PPG includes examples of unreasonable behaviour by planning authorities that may give rise to a substantive award of costs. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan national policy and any other material considerations", "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis" and "failure to produce evidence to substantiate each reason for refusal on appeal".

6. The submissions confirm that the Council decided to refuse the application contrary to the initial advice of their professional officers. Whilst Local Planning Authorities are not bound to accept the recommendations of their officers, as noted above the PPG provides that Councils are at risk of an award of costs if they prevent or delay development which should clearly be permitted or fail to produce evidence to substantiate each reason for refusal.
7. With regards to the first reason for refusal, there is a degree of subjective judgement involved in respect of finding harm to the Cornwall and West Devon Mining Landscape World Heritage Site (the WHS). It is apparent from the Council's submissions that members considered that there would be harm to the WHS and gave their reasons for that finding. Whilst it will be seen from the appeal decision that I disagree with the Council on that matter, I consider that a substantive and comprehensive case was made in that regard by the Council for their finding of harm and the resulting conflict with policies of the development plan.
8. In terms of the second reason for refusal provided by the Council, it will again be seen from the Appeal Decision that I have come to a different conclusion with regards to whether future residents would have satisfactory access to services and facilities. It is noted that the Highway Officer did not object on grounds of safe and suitable access to the site for vehicles and pedestrians. However, the reason for refusal given by the Council concerns convenience of access to services and facilities, and in particular access to public open space, in terms of distance.
9. There is again a degree of subjective judgement in terms of the acceptability of access to services by reason of distance, and the evidence before me indicates that the Council took the view that the appeal proposal fell outside what was acceptable. The Council's statement of case refers to travel distances to public open space and provides a view on whether the proposal, by reason of its location, would be acceptable in terms of access to the range of services and facilities that could reasonably be required on a daily basis. Whilst I have disagreed with the Council on that issue, the Council has substantiated its reasons and therefore has not acted unreasonably in that regard.
10. The Applicant has put it to me that the Council have acted unreasonably by failing to apply the presumption in favour of sustainable development as included at paragraph 11 of the National Planning Policy Framework (the Framework).
11. However, it is apparent from the Council's submissions that members considered that there would be harm to the WHS and to the living conditions of future residents, and gave their reasons for those findings. It is also clear from the evidence before me that the Council considered the harm to the WHS and the harm to the living conditions of future occupants would not be outweighed by the proposed provision of affordable housing and other public benefits that the scheme would bring.
12. As noted above, there is a degree of subjective judgement involved in respect of the harm to the WHS and with regards to acceptability of access to services by reason of distance. Whilst it will be seen from the appeal decision that I disagree with the Council on those matters, it is apparent that the Council, having found harm to the WHS and to the living conditions of future residents, concluded that the benefits did not outweigh that harm and was not

sustainable development. I therefore do not find that the Council acted unreasonably in respect of the application of paragraph 11 of the Framework.

13. The Council is not bound to accept the recommendations of their officers. Whilst the Council case officer recommended approval of the planning application, they were not the ultimate decision maker as recommendations are not binding upon the Council until the point at which a formal decision is made.
14. 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 and that, therefore, an award of costs is not justified.

A Spencer-Peet

INSPECTOR