



Costs Decision

Hearing Held on 3 November 2022

Site visit made on 3 November 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Costs application in relation to Appeal Ref: APP/D0840/W/21/3267255 Land north of Higher Rosewarrick, Lanivet, Bodmin, Cornwall PL30 5JS

- 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 Mrs T Orchard for a partial award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the change of use of land to a private Gypsy site.
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Decision

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

The submissions for Mrs T Orchard

2. The applicant seeks a partial award of costs on the basis of the Council's approach to locational sustainability in terms of Policy 11 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) and its application of Policy 7 of the Local Plan. The applicant considers that it is common ground that the distance of the site to services and facilities is less than the 3 miles required by the development plan. It is argued that it is entirely unreasonable for the application to then be refused on this basis.
3. Furthermore, it is explained that the Council had the opportunity to review its case in the light of two recent decisions at land at Rookery Farm¹ and land west of Trevoole Farm². The applicant says that the Council was explicitly asked to do so and it continued to persist with the objection on this locational sustainability ground, which shows further unreasonable behaviour.
4. Additionally, the case is made that the Council acted unreasonably by the argument that the appeal proposal should be refused for the conflict with Policy 7 of the Local Plan and by continuing to rely on the alleged failure of Policy 7 despite this matter being addressed in the land west of Trevoole Farm appeal decision. That appeal decision showed the correct approach, that Policy 7 was not relevant and it was therefore unreasonable to rely and then persist on it as part of the objections to the scheme.

¹ APP/D0840/W/21/3282303 - Land at Rookery Farm, Porthtowan, Redruth TR16 5UG – dated 27 October 2022.

² APP/D0840/W/19/3242850 - Land west of Trevoole Farm, Botetoe Hill, Trevoole, Cornwall TR14 0RN – dated 11 January 2022.

The response by Cornwall Council

5. The response, in summary, was that for the reasons set out in the Council's submissions the proposal was not considered to be policy compliant in terms of Policy 11. This includes because of the nature of the road network which serves the site, meaning that it is not conducive to access other than by the private motor vehicle. It is explained that the Council has set out the site specific concerns that mean the location does not meet the policy test.
6. The case is made that in the recent land at Rookery Farm appeal the Inspector concludes, at paragraph 37, that the scheme, while finely balanced on this issue, had sufficient access to services and facilities by a range of transport modes. The Council explain that it is of the opinion that the site specific circumstances in the present appeal are materially different because there would be no viable option to the use of the private motor car.
7. It is further argued that whether the approach roads are suitable requires a planning judgement to be made and no two schemes are ever likely to be identical. The conclusions, therefore, based on the site specific circumstances, are reasonable.
8. In respect of the application of Policy 7 of the Local Plan to the appeal scheme, the Council consider that the development plan should be read as a whole. The proposal is for housing in the countryside and, as a consequence, Policy 7 is of relevance and provides no assistance to the scheme. Whilst the Council acknowledge that Policy 11 is the key policy, the Council consider it was correct not to ignore the wording of Policy 7.
9. The Council consider that it has set out a logical and reasoned justification in defence of its decision and fulfilled the requirements of the appeal section of the Planning Practice Guidance (the Guidance) and the Planning Inspectorate Procedure Guide in opposing the scheme. As a consequence of all these matters, the Council consider that it has acted reasonably and that an award of costs is not justified.

Reasons

10. 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.
11. The Planning Report which was used to support the Council's arguments sets out in full Policy 11 of the Local Plan. The Report confirms that it is only criterion 3 of Policy 11 that would not be met. The commentary makes reference to the distance to services and facilities and that the distances which are quoted, with the exception of the secondary school, are less than the 3 mile policy requirement. The analysis then goes on to examine the nature of the roads to various settlements. It concludes that the situation is not conducive to meeting the policy test that occupiers should be able to access services by a range of transport modes.
12. The reason for refusal accompanying the application is written in more general terms and comments about the unsustainable and inaccessible location away from any defined settlement and community and infrastructure facilities which would result in an unsustainable development.

13. The appeal statement from the Council focuses on the nature of the connecting roads and the resulting lack of alternative options to access the site other than by the private vehicle. Little reference is made to the measured distance in the appeal statement. At the hearing the Council appeared to accept that the distances, which were set out in the Statement of Common Ground, ticked the box in terms of the distance requirement.
14. I consider that the Council could have been clearer in the Planning Report that the distances met with that element of the policy. The analysis appears to conflate the two issues of distance and modes of transport and seems to raise some concern with the distance in itself. Nevertheless, a substantive part of the Planning Report comments on the nature of the connecting roads and this leads to the concern with the lack of options for modes of transport such that criterion 3 of Policy 11 would not be met.
15. I agree with the conclusion that the location of the site and the nature of the connecting roads are such that the policy requirement regarding modes of transport would not be met. In this respect, the analysis and judgement of the Council is well founded. The distances were correctly referenced in the report and it was, in my view and from a reading of the report as a whole, more clearly the nature of the connecting roads and effect on options for transport modes that led to the Council's conclusion that Policy 11 would be failed. It was this approach that the Council, at the hearing, sought to argue was a substantive reason that the proposal was unacceptable. This was a reasonable approach and a matter of judgement. Overall, while the Planning Report could have been clearer on whether the location met the distance requirement, in the context of the other analysis and commentary on criterion 3, and the justified conclusion that the proposal was not policy compliant in terms of the criterion as a whole, the assessment of the Council on this matter does not meet the bar of unreasonable behaviour. An award of costs in relation to this matter is not justified.
16. Furthermore, I do not consider that the Council's approach, in terms of the modes of transport issue, was inconsistent with the appeal decisions at land at Rookery Farm and land west of Trevoole Farm. Both these decisions examined the distances to services and facilities and the ability to access the sites by a range of transport modes. With, in particular the latter issue, this is a matter of judgement in each case and I agree with the Council in its conclusion on this aspect in terms of this appeal proposal.
17. Policy 7 of the Local Plan, which concerns new housing in the countryside, was fairly briefly mentioned in the Planning Report and then referenced in the reason for refusal, along with the other policies that were in dispute. In the Council's appeal statement there was another, reasonably minor, reference to Policy 7 which concluded that the subject proposal gained no support from Policy 7. That was also the view of the Council at the hearing.
18. However, there would be other policies in the Local Plan that the appeal proposal would not gain support from and the inclusion of Policy 7 in the indicative reason for refusal indicates to me that it was a policy that the Council considered the scheme would not accord with.
19. The Planning Report references the appeal decision at the land west of Trevoole Farm. This was also in a countryside area and the same issue in relation to a Gypsy and Traveller site and Policy 7 was examined. That was also an appeal I

determined and in that decision I concluded, as I have done in the present decision, that Policy 7 is not directly relevant to the considerations. It does not appear that Council took into account this conclusion in the Planning Report which led to the identifying of Policy 7 in the reason for refusal. Furthermore, in drafting its appeal statement and in maintaining the stance in relation to Policy 7, the Council did not review its case promptly following the lodging of the appeal, as required by the Guidance.

20. I consider that the reference to Policy 7 of the Local Plan in the indicative reason for refusal, and maintaining its position at the appeal, could be considered unreasonable. However, the references to Policy 7 were no more than brief and minor parts of the Council's Planning Report and appeal statement, was not referred to in any detail in the applicant's appeal statement and was the subject of only a fairly brief discussion at the hearing. As a consequence, even if I was to consider that the Council's reference to Policy 7 was unreasonable, the applicant did not incur any material level of unnecessary or wasted expense in the appeal process and the circumstances for an award of costs in this respect are not met.

Conclusion

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

David Wyborn

INSPECTOR