The Planning Inspectorate

Costs Decision

Site visit made on 17 January 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3302876
Land North East of Glebe Cottage, St Ewe, St Austell PL26 6EY

- 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 JA and EJ Lakeman for a full award of costs against Cornwall Council.
- The appeal was against the refusal of planning permission for a rural exception site for up to nine dwellings and associated landscape works.

Decision

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

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) preventing or delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy, and any other material considerations;

    b) failure to produce evidence to substantiate each reason for refusal;

    c) making vague, generalised, or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis; and,

    d) refusing planning permission on planning grounds capable of being dealt with by conditions.

4. All of these are cited in the PPG as examples of behaviour that may give rise to a substantive award of costs against a local planning authority[1].

5. On the first issue, the applicants contend that, in arriving at its decision, the Council failed to acknowledge the unmet local housing need, and erroneously raised accessibility to services and public transport as a reason for refusal. However, the Council's delegated report included a section on affordable housing, which referenced the level of housing need in the locality, and detailed

[1] Paragraph: 049 Reference ID: 16-049-20140306

the support of the Affordable Housing Team. The concluding paragraph of the report referred to the *"clear planning benefits in respect of the provision of new affordable housing".* I am therefore satisfied that the Council did include consideration of the need for housing in the parish in the overall planning balance.

6. The accessibility of the site to public services was not a key issue that led me to dismiss the appeal. Nevertheless, that is not to say that it was unreasonable for the Council to have included it in the planning balance. Policy 27 of the Local Plan and Section 9 of the National Planning Policy Framework both seek to locate development so that the need to travel will be minimised, and the use of sustainable transport modes can be maximised. Whilst I concluded that compliance with Policy 9 did not require an accessible location, it was not unreasonable for the Council to have relied on other policies of the Local Plan, and on national planning guidance, that pulled in a different direction.

7. In any event, I ultimately concluded that the appeal should be dismissed. It therefore follows that I do not consider that the Council prevented or delayed development which should clearly have been permitted.

8. The second issue relates to the fourth reason for refusal, which related to the impact of the development on foraging and commuting bats, and was withdrawn by the Council in its appeal statement.

9. The application was accompanied by a Preliminary Ecological Appraisal (the PEA) prepared by a suitably qualified expert. The PEA indicated that the site is likely to be used by foraging and commuting bats, but given its small size, and the availability of favourable bat foraging and commuting habitat in the wider area, it is of no more than local value to bats. The PEA described the impacts of the development on bats and how they could be mitigated, and identified measures for enhancement. It concluded that the landscaping of the site could deliver biodiversity net gain and provide habitat enhancements for species, including bats. It recommended that a detailed landscaping and ecological management plan, demonstrating a 10% net gain in biodiversity, should be made a condition of planning approval.

10. The Council's decision that the development would disturb foraging and commuting bats appears to have been taken without any equivalent expert evidence to cast doubt on the PEA's conclusions. The Council argues that it decided not to defend this reason for refusal in the light of additional evidence submitted with the appeal. However, this comprised a letter from the author of the PEA, which largely reiterated the previous information and conclusions, with no new survey work. Although the PPG encourages Council's to review their case promptly following the lodging of an appeal, this does not exonerate them from ensuring that, at the time of making the decision, all the reasons for refusal can be substantiated at appeal. By the time the Council withdrew the fourth reason for refusal, the appellant had already been put to the expense of rebutting it in their statement of case. Failure to produce evidence to substantiate this reason for refusal therefore amounted to unreasonable behaviour, resulting in unnecessary expenditure for the applicants.

11. The third issue relates to the third reason for refusal. The applicants contend that the consultation reply from the Council's Historic Environment Planning Team only referred to a lack of information relating to archaeology. It is therefore argued that it was unreasonable for the Council to introduce concerns

about the settings of listed buildings in its appeal statement, which amounted to a new issue.

12. However, the Council's delegated report included a section entitled *"Archaeology and heritage"*, which referred to the site being *"within eyeline views of two listed buildings"* (Nantuat and The Crown Inn). The section concluded that there was *"insufficient information with which the LPA can assess the level of harm to the setting of designated heritage assets and in relation to archaeological potential at the site"*. The reason on the decision notice said, *"insufficient information has been provided to assess the impact on designated heritage assets and archaeology at the site"*. It is, therefore, evident to me that the Council's reason for refusal did not only relate to archaeological matters.

13. A Historic Environment Impact Assessment (the HEIA) was submitted with the appeal to address the Council's reason for refusal. It provided evidence relating to the impact on the setting of the listed buildings. In these circumstances, it was not unreasonable for the Council to comment on this evidence in its appeal statement. Consequently, although I did not find any harm to the settings of the listed buildings in my decision, it was not unreasonable of the Council to have raised the issue in its statement, as the impact of the development on the settings of listed buildings was evidently part of the concern that led to the refusal.

14. On the fourth issue, the applicants contend that reasons for refusal numbered 3 and 4 could have been dealt with by the imposition of appropriately worded planning conditions. The Council withdrew the fourth reason, and I have already concluded that this amounted to unreasonable behaviour.

15. As far as the archaeological issue is concerned, the Council was advised by its Historic Environment Team that the Historic Environment Record indicated that the site lies within land characterised as Anciently Enclosed Land, with a high probability for the survival of buried archaeological remains. It was recommended that a Heritage Impact Assessment/Archaeological Assessment together with a geophysical survey of the site should be commissioned in support of the application. In the absence of any expert advice to the contrary, it was not unreasonable for the Council to conclude that this information was necessary to inform its decision.

16. An Archaeological Magnetometer Survey was submitted with the appeal, which detected anomalies of potential archaeological origin. The HEIA concluded that these were of low, or unknown, significance. Based on these findings, the Council has now conceded that the archaeology issue could be addressed via an appropriately worded condition. However, this is only as a result of additional evidence that was submitted as part of the appeal. In the absence of that information, it was not unreasonable for the Council to have originally included the reason for refusal on the decision notice.

Conclusion

17. I have not found that the Council unreasonably prevented or delayed development which should clearly have been permitted. Consequently, a full award of costs is not justified. However, the applicants were put to unnecessary expense in defending the fourth reason for refusal, which was subsequently withdrawn. I therefore find that unreasonable behaviour by the

Council, resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. 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 JA and EJ Lakeman, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in providing evidence in relation to the fourth reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. 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 agreement as to the amount.

Nick Davies

INSPECTOR