



Costs Decision

Site visit made on 6 December 2022

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3292448 44-46 Market Street, Falmouth TR11 3AJ

- 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 Andrew Strathdee, Acorn Blue, for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for mixed use development comprising retail and residential uses.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant contends that the Council has exhibited unreasonable behaviour that made the appeal necessary in the first place in relation to preventing development from proceeding that should have been permitted, and misapplying policies of the development plan. Furthermore, the applicant states that through the misapplication of policies, the Council provided vague, generalised and inaccurate assertion about the proposals impact and a lack of reasoning supported by objective analysis.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Furthermore, Paragraph 038 of the PPG states that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case.
5. In light of the above PPG guidance, I note the Council have not submitted a rebuttal to the Costs application. However, along with the Officer Report (OR), a comprehensive Appeal Statement has been provided. Both the decision notice, and the OR sets out policies that the Council rely on within their

- decision including Policy 27 of the Cornwall Local Plan Strategic Policies 2010-2030 (LP) and policies TC1 and TC5 of the Falmouth Neighbourhood Development Plan 2021-2030 (NP). Although the Council have provided two reasons for refusal, the applicant's costs application relates solely to reason 1, relating to the proposed carparking provision associated with the development.
6. The Council's case for the first reason for refusal relates to concerns that the provision of off-road vehicular parking would generate an increased use of the main street for vehicular access, contrary to a strategic vision to prioritise pedestrian movements in Market Street.
 7. My attention has been drawn to the Falmouth Neighbourhood Plan examining Inspectors comment, and in particular those relating to NP Policy TC5 which sought to remove wording that restricted the ability for dedicated parking provision, preferring a need to assess each case separately.
 8. As explained in my decision letter, I found in favour of the Applicant on the first substantive issue related to the appeal, i.e. that NP policies TC1 and TC5 do not go as far as preventing additional off-road parking associated with new developments within Market Street. In this regard, as set out in my decision letter, while I understand the Council's wish to deliver the Town Centre Strategy and the role the NP has in achieving this, I consider the Council's particular approach and rationale in terms of applying policies TC1 and TC5 within this case unreasonable, especially in light of the NP examining Inspectors comments.
 9. Although the Council have attempted to provide substantive reasoning, and I acknowledge the concerns relating to delivering a strategic vision, it is nonetheless the case, as I have outlined in the main decision, that the development plan policies that the Council sought to rely on did not support the Council's reason for refusal, and were misapplied. The Council's behaviour in this regard has been unreasonable and has resulted in the Applicant incurring unnecessary and wasted expense addressing this aspect of the reason for refusal; such unreasonable behaviour as described in the Annex has been demonstrated and a partial award of costs is justified.
 10. My attention has also been drawn to pre-application advice that was received by the applicant as well as another Inspectors decision in a differing appeal case. It does appear that advice, with particular regard the Highways Officer, changed through the planning application process.
 11. However, Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors at the time of the application. In this instance, I note that initial advice was provided before the NP was made, and therefore the Policy context has evolved throughout the planning process. In this regard, although it is clear advice significantly changed, I do not find that this in itself results in unreasonable behaviour.
 12. Furthermore, although I note the Inspectors decision in the other appeal¹, that appeal differs from the current proposal in several ways. It concerns another site relating to a different development, and predates the adoption of the NP and therefore current policy context. Also, the full details of the other case

¹ APP/D0840/W/20/3257017

were not before me. This limits the equivalence of the other case to the current proposal. In this regard, I do not find that the other appeal decision results in the indication that this proposal would be acceptable.

Conclusion

13. Taking all the above points into account, I conclude that the Council have behaved unreasonably having regard to the advice contained within the Annex. However, given the second reason for refusal, the appeal would have been necessary and as such, a partial award of costs is justified in the terms set out below.

COSTS ORDER

14. 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 the Cornwall Council shall pay to Mr Andrew Strathdee, Acorn Blue, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in adducing evidence specifically related to his defence connected to the Council's use of NP policies TC1 and TC5 to justify their refusal.
15. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Harrington

INSPECTOR