
Costs Decision

Site visit made on 18 April 2023

By J Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3309357 Land off Chywoone Hill, Newlyn, Cornwall TR18 5LL

- 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 Jennifer Hawkins, Development Officer, Cornwall CLT for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for twenty nine affordable dwellings with a mix of bungalows, flats and three bedroom houses.
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Decision

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

Reasons

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
3. In relation to substantive behaviour they include unreasonably refusing planning applications and promoting vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The Council's Highways officer had reviewed the scheme and commented that, in terms of the operation of Chywoone Hill, there would be *a relatively significant negative impact*.
5. The officer's report to the Planning Committee accepted that the decision whether or not to grant planning permission was finely balanced, but nonetheless recommended that planning permission should be granted.
6. At the planning committee there was anecdotal evidence given by several members including that up to twenty tractors a day used Chywoone Hill, and that traffic had increased by 75% over the last 5 years. However, no significant

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

evidence was provided to support these contentions. Moreover, the Councillors were made aware that the word severe would need to be used to align with the wording of the National Planning Policy Framework and that this was 'the buzzword for highways'.

7. It is perfectly in order for Councillors to come to a different decision than their officers. However, it is incumbent upon them to provide objective reasons and evidence for doing so. In this case the highways officer did not use the word severe, and as he is the expert on such matters it seems to me to be reasonable to assume that he knew the consequences of using or indeed not using the word. The officer who wrote the committee report took into account the highways advice and also presumably the comprehensive information provided by the appellant. He came to his view by balancing the benefits and disbenefits put before him.

Conclusion

8. The Councillors however, having the report before them, and without having anything more than anecdotal evidence, decided to upgrade the highways officer's advice after being prompted to use the word severe. This seems to me, in the absence of further significant evidence or objective analysis, to represent unreasonable behaviour, as described in the Planning Practice Guidance. This behaviour has caused the appellant to incur unnecessary or wasted expense on the appeal process and has delayed the development. A full award of costs is therefore justified.

Costs Order

9. 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 Jennifer Hawkins, Development Officer, Cornwall CLT, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. 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.

John Wilde

Inspector