



Costs Decision

Site visit made on 3 May 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th May 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3312555 Land at Lankelly Farm, Lankelly, Fowey PL23 1HN

- 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 Cornwall Council for a full award of costs against Mr Chris Biggs.
 - The appeal was against the refusal of planning permission for construction of 3 dwellings with associated amenity space.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 PPG advises that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. It provides examples of the circumstances where this may occur. One of these is *where the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence*¹.
4. The application contends that the appellant acted unreasonably in pursuing the appeal, as the proposal was in clear conflict with Policy 3 of the Neighbourhood Plan², which was adopted more recently than the Local Plan³. Furthermore, it is contended that, even if Local Plan Policy 3 was still given weight, the proposals clearly did not accord with its requirements. It is further alleged that in making the application for market housing, and pursuing the appeal, the appellant ignored pre-application advice that the site was only suitable as a rural exception site for affordable housing.

¹ Paragraph: 053 Reference ID: 16-053-20140306

² Fowey Parish Neighbourhood Development Plan 2019-2030

³ Cornwall Local Plan Strategic Policies 2010 – 2030 (adopted 2016)

5. It is not a matter of dispute that the site lies outside the Development Boundary identified by the Neighbourhood Plan. In these circumstances, Neighbourhood Plan Policy 3 says that proposals for residential development will be considered as Rural Exception Sites in line with Policy 9 of the Local Plan. Nevertheless, Policy 3 of the Local Plan remains a part of the development plan, and gives support to market housing adjoining settlements where certain criteria can be met. It is not unusual for different parts of the development plan to pull in different directions, and, in these circumstances, the decision-maker must consider the development plan as a whole. It was not unreasonable behaviour for the appellant to advance the case that compliance with the overall settlement strategy of the Local Plan should outweigh the conflict with the more detailed Policy of the Neighbourhood Plan, albeit that the Neighbourhood Plan was adopted more recently.
6. Whether the criteria in Local Plan Policy 3 are satisfied requires some subjective judgement on the part of the decision-maker. I concluded that the proposal did not amount to rounding off as defined by the Local Plan. However, as the site is adjacent to built development, it was not irrational for the appellant to contend otherwise. Therefore, it was not demonstrably unreasonable to pursue the case on that basis.
7. The appellant was aware of the Council's likely response to the application, through the pre-application advice he was given. However, pre-application advice is given on an informal basis, and does not bind the Council to a decision on a formal application. It is not unreasonable behaviour for applicants to test that advice through a formal application, allowing for full public consultation, which may lead to a different conclusion. In any event, in this case, the advice did not rule out that some residential development may be acceptable, albeit that it should be restricted to affordable housing. It was not unreasonable for the appellant to submit an application to test whether market housing may also be acceptable.

Conclusion

8. For the above reasons, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR