



Costs Decision

Site visit made on 25 April 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3295228 Land east of Wellington Place, Wellington Place, Old Carnon Hill, Carnon Downs, Cornwall TR3 6LF.

- 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 C Wells for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for an outline planning permission for the erection of up to five dwellings, to include the approval of the site access (all other matters reserved).
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Decision

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

Reasons

2. The Planning Practice Guidance (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.
3. The applicant seeks a full award of costs on both procedural and substantive grounds. In summary, the applicant argues that the Council has failed to take account of all of the relevant material considerations, including by clearly disregarding information submitted by the applicant in support of the proposal and therefore has erred in its decision making. Furthermore, it is argued that the Council has not acted in a transparent manner and has failed to give due diligence to the administrative processes and procedures, with a series of errors and has avoided publishing key documents relating to the appeal case.
4. The applicant explains that he was working proactively with the original case officer. When a new case officer was appointed, he advised within 12 minutes of receiving an e-mail update request from the applicant that the application would be refused. The applicant argues that the new case officer could not possibly have given due consideration to the material submitted and that the decision was prejudged, without a thorough and balanced consideration of the relevant material considerations. This includes not appropriately taking into account the appeal decision at Highgate Hill, Indian Queens¹ which is argued sets a clear precedent to how the present appeal proposal should be considered.

¹ APP/D0840/W/21/3275410 - Land to the East of the Stables, Highgate Hill, Higher Fraddon, St Columb TR9 6LG

5. Missing policy references in the first reason for refusal and the missing reference to the byway number are also highlighted as being unreasonable behaviour. Moreover, the applicant considers that the second reason for refusal could have been avoided through the imposition of suitable conditions relating to the resurfacing of the byway and the creation of additional passing places, as was said to have been demonstrated in the Transportation Advisory Note (22 November 2021).
6. The applicant also raises concerns with the lack of an officer planning report after the application had been refused, as when a request was made for a copy because it had not been uploaded to the web site, an unfinished and wholly inadequate set of text was sent. It is explained that this does not closely resemble the planning report that was submitted with the Council's appeal papers and that it appears to the applicant that the report was not written when the application was refused. The documentation from the applicant indicates that the planning report is still not available on the Council's web site.
7. The applicant further questions the soundness of the decision making in terms of the highway aspects because the original comments of the Highway Development Management Team stated that there was not a continuous footpath to the village centre. However, it is explained this does not take into account the recently completed significant upgrades which provide a footpath link to the centre of Carnon Downs, and it appears to the applicant that the analysis was based on older Google Street view images. No updated response was made by the Highway Development Management Team when this was raised and, in the applicant's opinion, this calls into question whether the Council has appropriately considered the application and the relevant facts.
8. It is argued that this combination of failures amount to wholly unreasonable behaviour and demonstrates a significant lack of care and attention applied by the Council in making the decision. This led to the applicant incurring significant additional costs associated with the preparation of the appeal documentation and time spent by the agent in raising matters with the Council that had not been included or neglected in the process of determination.
9. The Council has responded to explain that it has not acted unreasonably in terms of the Guidance and that the applicant's main issue appears to be with the Council's processing of the application, which is purely a matter for the Council and the Council alone. The Council argue that it has taken all the relevant information into account and that the fact that an applicant may be aggrieved by a decision is not a basis for an application for costs.
10. The Council consider that it has published all the documents on the website that it is required to and that while the case officer is criticised for a prompt response, that email response also explains that the previous case officer had made some detailed notes and that he had reviewed the application. The Council explain that the replacement case officer, therefore, was not starting from scratch.
11. It is said that while the omissions from the decision notice are regretted it would have been plain to the appellant what the relevant policies were and what byway was being referred to. In terms of highway impacts the applicant's Transportation Advisory Note was addressed in the Council's appeal statement and the criticisms would not lead to a different decision on the issues raised and that the application was not refused in relation to access to services.

12. The Council consider that it has dealt with the proposal in a reasonable manner and has not prevented, inhibited or delayed development which could have reasonably been permitted. It follows in the view of the Council it has not acted unreasonably in the appeal process and no award of costs is justified.
13. When considering these matters, I am conscious that the Guidance explains that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although the behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
14. Concerns regarding the delay to appoint, and the approach of, the replacement case officer are matters for the Council. I note the criticism that the replacement case officer was said to have not examined the submissions adequately and could not have made a considered judgement when asked. However, as the Council point out, the email from the replacement case officer on 4 February 2022 to the applicant's agent says that there were some detailed notes on this application and that he has reviewed the application. I also assume that the papers available to the replacement case officer were ones that had been forwarded from the applicant on previous occasions.
15. This would include the appeal decision at Highgate Hill, Indian Queens which was forwarded by the agent on 7 January 2022. The response from the replacement case officer should be seen in the context that the file should have contained this information and had been reviewed. The almost immediate response from the replacement case officer to the agent's email on 4 February 2022 does not, therefore in itself, demonstrate a lack of care or consideration in the analysis of the proposal.
16. In particular, the applicant places emphasis on the appeal decision at Highgate Hill, Indian Queens, as setting a clear example that should be applied to the present appeal decision and to not demonstrate doing so was unreasonable. However, for the reasons I have explained in my decision, the circumstances are materially different, and I do not consider that the Council has erred in the way that it has taken the appeal decision at Indian Queens into account when determining the present proposal.
17. Criticism is made that, with appropriate planning conditions attached to any approval, the second reason for refusal could have been avoided. The Council would have been aware of the commentary in the Transportation Advisory Note and that there were opportunities for surfacing and passing bays, but it was not unreasonable for the Council to still take the view that the access was unsuitable and that this could not be addressed by planning conditions. That is a matter of judgement. While I disagreed on this particular highway matter, it was not an unreasonable position to take given the nature and condition of the byway route to and from the development. Again, there is no unreasonable behaviour in this respect.
18. The original commentary in the Highway Development Management Team's response that there was not a continuous footpath along Old Carnon Hill to the entrance of the byway is incorrect and does not reflect the situation on the ground. Nevertheless, the proposal was not refused on concerns regarding the ability to access services and facilities locally by foot and, therefore, while unfortunate this was not a material issue that affected the outcome of the proposal.

19. In terms of the missing references in the reasons for refusal, the missing byway reference number is a minor administrative matter, and the applicant was aware of the position of the byway and had made appropriate references to this in submissions. However, the failure to reference the specific policies of the Feock Neighbourhood Development Plan 2017-2030 (the Feock NDP) is a more serious omission because it is a requirement that where planning permission is refused, the notice must state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision. This omission of the policy or policies from the Feock NDP had the potential to lead to some uncertainty to the applicant in formulating the appeal documents.
20. This potential uncertainty seems to be compounded by the issues around the planning report. The application was refused by the Council on 11 February 2022. The agent for the applicant asked the Council for a copy of the planning report on 14 February 2022. The case officer did not send a copy of the report but forwarded a limited number of paragraphs which sought to cover the planning issues. The sections of this text on the location and policy context, and the single sentence under the heading of landscape impact, are the same as the planning report submitted at the appeal. However, the section on highway issues is substantially shorter than the subsequent planning report. This part of the forwarded text did not cover any other detailed information or commentary.
21. The information available is suggestive, that if the report had been available at that time, it would have been easier to send a copy of the report rather than a truncated version that did not cover all the issues in detail. The applicant raises the concern that the planning report was not available from the Council until the submission of its appeal documents. Whatever the situation, the applicant did not have this information available when the appeal statement was written and the Council, subsequently, amplified the analysis set out in the planning report in its appeal submissions.
22. One of the examples, listed in the Guidance, of unreasonable behaviour by the local planning authority which may result in an award of costs is only supplying relevant information at appeal when it was previously requested, but not provided, at the application stage.
23. I consider that it was unreasonable for the Council, when requested for a copy of the planning report, to send a shortened version of the text that did not cover the full detail of the planning considerations. This was compounded by the omission of the policies from the Feock NDP in the decision notice which did not provide clear guidance on all the policies that were deemed to be failed by the scheme.
24. While the applicant had the reasons for refusal and the comments of the Highway Development Management Team to assist with the appeal submissions, it seems to me that the appeal statement could potentially have been more focused if all the information had been available at that time. The applicant had to spend time seeking information from the Council and potentially covering matters in the appeal statement that could have been avoided if the planning report had been made available together with the identification of the relevant policies from the Feock NDP. This could have been avoided if the Council had acted reasonably in this regard.

Conclusion

25. The Council acted reasonably in refusing the proposal. The way that the Council considered the evidence and justified its conclusions was satisfactory and the appeal could not be avoided.
26. However, for the reasons explained above, the Council acted unreasonably in its actions with regard to the planning report, the details of which it later amplified in its appeal submissions, and with the omission of the policies from the Feock NDP in the first reason for refusal. This constitutes unreasonable behaviour and, in all likelihood, resulted in some unnecessary and wasted expense in the appeal process. A full award of costs would not be appropriate, but a partial award is justified in the limited circumstances that I have found.

Costs Order

27. 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 C Wells, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred resulting from the omission of policies from the Feock NDP in the first reason for refusal and from the inability of the Council to supply a copy of the planning report when requested, such costs to be assessed in the Senior Courts Costs Office if not agreed.
28. 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 an agreement as to the amount.

David Wyborn

INSPECTOR