



Costs Decision

Site visit made on 10 May 2023

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 June 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3301617 Land NE of Dean House, Trenherth Road, Leedstown TR27 5ER

- 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 Steve Edwards for a partial award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for erection of 3 No. detached dwellings.
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Decision

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

Reasons

2. Although the Council's Decision Notice contains a single reason for refusal, it covers two main planning issues. The first issue concerns the overall principle of developing the site, with particular emphasis on planning policies which control the location of new housing. The second issue concerns the effect of the proposal on the character and appearance of the area. The application for costs is made in relation to the Council's approach to the first issue regarding the overall principle of the development.
3. In essence, the reason for refusal says that the site is situated in the open countryside outside the Leedstown development boundary where only affordable schemes are permitted. This narrative appears to be based on Policies HT1 and HT2 of the Neighbourhood Plan, although several Local Plan policies are also listed on the Decision Notice.
4. As noted in the Committee Report, Policy HT1 is irrelevant as it only applies to developments inside the Leedstown development boundary. While Policy HT2 applies to sites outside the boundary, it is made clear in the accompanying Committee Report that non-compliance with this particular policy does not, in itself, bring the proposal into conflict with the Development Plan. Indeed, the officer's recommendation for approval is based on compliance with Policy 3 of the Local Plan which allows for the 'rounding off' of settlements.
5. In this respect, the Decision Notice is somewhat lacking. It is not clear why the Council takes a different stance on Policies HT1 and HT2 from that outlined in the Committee Report. Moreover, while Policy 3 is included within the reasons for refusal, there is no explanation of why the Council considered the proposal to be in conflict with this policy.

6. The PPG¹ advises that costs can be awarded when unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense during the appeal. Unreasonable behaviour includes failure to produce evidence to substantiate each reason for refusal. Bearing this in mind, my consideration of this application for costs is mainly focused on the evidence presented by the Council at the appeal stage of the process.
7. The Council's Appeal Statement does not explain in much detail why the proposal was deemed to be in conflict with Policy HT1, other than stating that the intent of the Neighbourhood Plan is to 'focus development within the settlement boundaries' (paragraph 5.9). The Council's main planning arguments, as set out in Section 5, place most emphasis on explaining why the proposal does not accord with Policy 3.
8. The Council's overall point in relation to Policy 3 is that the site 'lies in the open countryside outside the edges of Leedstown' (paragraph 5.12 of the Council's Appeal Statement). The justification for this is mainly set out in paragraph 5.7 which argues that the public byway 'serves to distance the site from the settlement' and that 'beyond this...the countryside takes precedence over built form which, as noted above, is very scattered' and finally concludes that 'the site is not contained within built development and would not amount to rounding off.' Paragraphs 5.8 and 5.9 go on to argue that because the site is in the open countryside, new housing would need to be affordable in accordance with the relevant development plan policies.
9. Whilst I do not find the Council's planning arguments particularly convincing, a reasonable attempt has nonetheless been made to substantiate the reason for refusal. Policy 3 requires a degree of planning judgement and the application of what constitutes 'rounding off' and 'open countryside' in any given location is clearly open to some interpretation. Consequently, the planning committee were entitled to take a different view on this issue from that of their officers. Although the main narrative of the reason for refusal is centred around the policies of the Neighbourhood Plan, the Council's case for refusing the development was not entirely reliant on it. Hence, even though Policy HT1 of the Neighbourhood Plan was largely irrelevant to the proposal, this was not determinative in the Council refusing the decision.
10. Although I am aware of broadly similar schemes that have been approved elsewhere, the extent to which site circumstances differ make comparisons difficult, especially as the definition of 'open countryside' and the application of Policy 3 require such a high degree of planning judgement. Hence, in my view, this is not an obvious example of a local planning authority being inconsistent in their approach to similar cases, or delaying development which should have clearly been permitted.
11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Colin Cresswell

INSPECTOR

¹ Planning Practice Guidance.