



Costs Decision

Site visit made on 22 August 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2023

Costs application in relation to Appeal Ref: APP/D0840/W/23/3315691 Pentrelew, Penarrow Road, Mylor Churchtown TR11 5UD

- 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 C McLaren.
 - The appeal was against the refusal of outline planning permission for construction of single storey eco self build dwelling in garden of Pentrelew.
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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 (PPG) advises that, irrespective of the outcome of the appeal, 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. The Council (applicant) considers that Mr C McLaren (appellant) acted unreasonably by pursuing an appeal without sound grounds and with no reasonable prospect of succeeding.
3. As set out in its appeal submissions, the applicant contends that the site does not form part of a settlement. It also argues that the proposed development cannot constitute 'rounding off' or 'infill' for example because the site is not surrounded on at least two sides by existing built development and does not form a gap in an otherwise continuously built-up frontage. In my appeal decision, I found that the site is not within or immediately adjoining a settlement. However, this does not mean that it was unreasonable for the appellant to put forward an opposing argument.
4. In this instance, the appellant's appeal submissions (and Design, Access, Heritage and Planning Statement) contained significant detail and substantiated their case on these topics, including in relation to relevant aspects from the Cornwall Local Plan Strategic Policies 2010 - 2030 and the Chief Planning Officer's Advice Note (CPOAN). Furthermore, the adopted development plan does not include an absolute definition of a settlement while the CPOAN only provides advice. From the available evidence and my own experience, it is also clear to me that much time and resource is spent considering whether appeal sites form part of a settlement and whether appeal proposals constitute rounding off, infill or development of previously developed land in terms of determining new housing proposals under the adopted development plan.

5. It has been put to me that the appellant has ignored criteria c of Policies H1 and H2 of the Maylor Parish Neighbourhood Development Plan 2020-2030 (NDP) and failed to consider the relevant criteria of NDP Policy H4. However, based on the submitted evidence, it is clear that the appellant did not ignore H1 or H2 (including criteria c) in their outline planning application and appeal submissions. Rather, the appellant simply takes a different view to the applicant of the wording of those policies; and in this instance, although I have dismissed the appeal, my findings about those policies is not dissimilar from the appellant's case. Supporting this, the appellant's costs response also includes an example where the Council has allowed a development within the parish but outside of the NDP defined settlement boundaries. The appellant's appeal submissions also sufficiently consider NDP Policy H4.
6. The appellant did not provide an updated visibility splay with the appeal. However, their appeal submissions include additional context and detail as to why, in their opinion, the proposed development would have sufficient visibility and why, for example, the guidance in Manual for Streets is not necessarily relevant. Although I have come to a different conclusion on this matter, this of itself does not mean that the appellant did not sufficiently substantiate their case in relation to this topic. In addition, whilst the appellant has referred to two example appeal decisions which are not particularly relevant given the different contexts, those examples were provided in support of their costs response and did not form an important part of the appellant's appeal submissions. The applicant's time spent responding to this specific matter therefore relates to its costs application rather than the appeal process.
7. It has been put to me that the appellant's reference to the presumption in favour of sustainable development is the wrong test. However, on the basis that the appellant argues that the appeal proposal accords with the development plan, reference to the presumption in relation to paragraph 11c of the National Planning Policy Framework (Framework) is not unreasonable. In any event, it seems to me that the applicant did not have to spend any real time or expense in countering this assertion in their appeal submissions.
8. I have not come to a different overall conclusion to the Council in relation to the appeal. Nevertheless, for the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

T Gethin

INSPECTOR