



Costs Decision

Site visit made on 9 May 2024

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs application in relation to Appeal Ref: APP/D0840/W/23/3326511 Land East Of Wesley Road, Cubert, Newquay, Cornwall, TR8 5HB

- 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 Kingsley Homes Limited for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for permission in principle for the erection of up to five dwellings.
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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 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 states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal.
4. In this instance, the Applicant has put it to me that during the determination of the planning application, Cornwall Council issued correspondence to Cubert Parish Council (the Parish Council) which stated that the Local Planning Authority was intending to grant permission in principle subject to the local protocol, setting out that the appeal site now formed part of the settlement rather than comprising open countryside. Subsequently, Cornwall Council wrote again to the Parish Council seeking further detail on the importance of the gap on the character of the area. The Applicant notes that the Parish Council raised a number of points which, it is maintained, had already been addressed by an Inspector in a previous appeal at the site.
5. The Applicant contends that within the correspondence which was initially sent to the Parish Council and which stated Cornwall Council was intending to grant permission in principle, Cornwall Council provided the Parish Council with three options: to agree with the recommendation; to agree not to agree; or, having made strong planning reasons to maintain the Parish Council's position against the recommendation that the application be determined by the planning committee. The Applicant has put it to me that a fourth option was taken to refuse the application on matters that Cornwall Council had already deemed to be acceptable as set out within the correspondence which was initially sent to the Parish Council.

6. The Applicant maintains the reasons given for refusal were not matters raised by the Parish Council, and that no reasons have been given as to why Cornwall Council's position changed from that originally expressed within the correspondence which was initially sent to the Parish Council, and which stated that Cornwall Council was intending to grant permission in principle. Furthermore, the Applicant has put it to me that the officer's report did not provide any particular reason why the scheme would conflict with Policy 3 of the Cornwall Local Plan Strategic Policies (the Local Plan).
7. In respect of the procedure applied by Cornwall Council, the PPG provides that costs cannot be claimed for the period during the determination of the planning application, but advises that all parties are expected to act reasonably throughout the planning process.
8. In their response to the costs application, Cornwall Council maintains that they acted reasonably throughout the planning process. In that regard, I have been provided with a copy of the Council's 'Protocol for Local Councils' (the Protocol) which advises that in the event that the case officer and local council cannot agree to resolve issues, then the options available are either to agree to disagree, or request that the matter be decided by the planning committee.
9. Within the initial correspondence between Cornwall Council and the Parish Council, it is noted that the officer sets out their reasons why, at that time, they would be likely to be recommending approval of the scheme. There were further exchanges of correspondence between Cornwall Council and the Parish Council, and in which the Parish Council expanded on its concerns regarding the location of the appeal site within the open countryside, the scheme's compliance with Policy 3 of the Local Plan in respect infill, the value of the gap in development at the appeal site's location and its importance to the setting of the village. The Parish Council then requested, in the event that officers continued to recommend approval, that the matter be put before the planning committee.
10. It is clear from the subsequent communication between Cornwall Council and the Parish Council, that the matter had been considered in light of the Parish Council's comments and that the Principal Development Officer would now recommend refusal. Consequently, it appears that in this instance the officer and the local council resolved the issues, and a decision was made to refuse the application. In such circumstances, the process followed by Cornwall Council accorded with the approach to be taken as set out in the Protocol. I therefore do not find that the Council acted unreasonably in that regard.
11. Furthermore, in respect of the contention that the officer's report did not provide any particular reason why the scheme would conflict with Policy 3 of the Local Plan, in my view the officer's report clearly considered the scheme against the criteria contained within Policy 3 of the Local Plan to include consideration of whether the scheme would represent infill development, referencing the guidance contained within the Chief Planning Officer's Advice Note – Infill/Rounding Off (December 2017).
12. The Inspector in the previous appeal at the site, and which concerned a similar application for permission in principle, found that the site comprised part of the countryside rather than forming part of the settlement, and assessed the harm to the character and appearance of the area in terms of the extension of built form into the countryside. As will be seen from the present appeal decision,

that position has significantly changed since the date of that previous appeal. The previous appeal did not consider or provide any conclusions on the significance of the gap in development along Wesley Road in terms of the setting of Cubert with regards to the policy requirements concerning infill. I therefore do not agree that the Council raised issues that had already been addressed by an Inspector in a previous appeal at the site.

13. In light of the above, whilst it will be seen from the Appeal Decision that I disagree with the Council regarding the location of the site within the settlement and that the scheme would accord with the policy requirements concerning infill development, I do not find that the Council prevented or delayed development that should clearly have been permitted. Furthermore, I do not find that the Council failed to substantiate their reason for refusal nor provided vague or inaccurate assertions about the scheme's impact. I also conclude that the Council has not persisted in objections to the scheme or elements of the scheme which an Inspector previously indicated to be acceptable.
14. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that, therefore, an award of costs is not justified.

Mr A Spencer-Peet

INSPECTOR