
Costs Decisions

Site visit made on 28 May 2024

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th June 2024

Costs applications in relation to Appeal Ref: APP/D0840/W/23/3334770 Springfield Meadow, Higher Lane, Mawgan, Cornwall TR12 6AX

- 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).
 - Application A is made by Cornwall Council for a full award of costs against Mr L Lugg, MJL Development Ltd.
 - Application B is made by Mr L Lugg, MJL Development Ltd for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for the construction of two dwellings.
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Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Initial submissions for Cornwall Council

3. The Council state that costs are being applied for as the appeal had no reasonable chance of success. This is on the basis that it follows a recent appeal decision in respect of very similar development on the same site where an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period. The only difference being the number of units.

Initial submissions for Mr L Lugg, MJL Developments Ltd

4. The application is for a full substantive award of costs on the basis that the Council relied upon a previous decision for a different development without assessment of the current proposal failing to properly assess whether the development is acceptable. As a result, the Council prevented and unnecessarily delayed development which should clearly be permitted. The Council failed to produce clear evidence to substantiate that the proposal does not constitute 'rounding-off' or integrate with the character of its setting and its surroundings.

Response from Mr L Lugg, MJL Developments Ltd to the Councils costs claim

5. There is an entitlement to seek to overcome reasons for refusal by making further applications with the previous appeal being against the non-determination of the application with no reasons for refusal. In light of the sustainable location of the site and lack of public views, the appellant should be

able to question the judgement of the previous Inspector, particularly when the Council rely solely on this and where an appeal decision with a contrary approach has been provided. Furthermore, the current appeal proposal is not 'very similar' being of a different design comprising reduced numbers with a subsequent 'Call for Sites' report with falling housing delivery rates published and the reasons for refusal engaged with as per a recent Costs Decision elsewhere in Cornwall¹.

Response from the Council to Mr L Lugg, MJL Developments Ltd costs claim

6. The Council state that its officer delegated report and subsequent appeal statement provide analysis of the context and correctly attribute significant weight to the earlier appeal decision. That despite the lesser number of units the policy considerations remain identical and that it exercised planning judgement and had appropriate regard to the previous appeal decision. Furthermore, it provided a detailed analysis of the impact on the character and appearance of the site reflecting the views of the previous Inspector. As a result, it has not acted unreasonably and demonstrated a logical and reasoned justification has been made.

Reasons

7. 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.
8. With regard to Application A, although I have found in the Council's favour in relation to the appeal, and the previous appeal decision is a material consideration given the similar policy considerations that apply, had the Council considered the proposal to be similar to the recently dismissed scheme, they could have declined to determine the application. By accepting the planning application, the Council indicated to the appellant that there had been a change in circumstances, and it follows that by accepting the application, there would be a subsequent right of appeal. Furthermore, the number of dwellings had been reduced and appellant produced evidence to support their appeal addressing the reasons for refusal, previous appeal decision and introducing new evidence in the form of the 'Call for Sites' report and another appeal decision. For these reasons I do not find that costs should be made in its favour.
9. With regard to Application B, the Council rightly referenced a recent appeal decision for a similar development where the same policy considerations apply. The previous appeal decision is clearly a material consideration, and the Council made a judgement on the acceptability of the proposal against the relevant policies. The Council clearly outlined and justified its case in its officer delegated report and appeal statement detailing why the proposal did not constitute 'rounding-off' and caused harm to the character and appearance of the area. Moreover, I have agreed with the Council's finding in these regards in my Main Decision. For these reasons I do not find that costs should be made against the Council.

¹ APP/D0840/D/22/3313376

10. In light of the above, I do not find that either party acted unreasonably. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in either case.

11. Therefore, both Application A and Application B for the award of costs must fail.

C Rose

INSPECTOR