



Costs Decision

Hearing held on 22 May 2024

Site visit made on 22 May 2024

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Costs application in relation to Appeal Ref: APP/D0840/W/23/3335749 Land At Penvose Farm, Roskrow, Penryn, Cornwall, TR10 9AN

- 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 Falmouth Student Village Limited for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of reserved matters for appearance, landscaping, layout and scale following outline approval for proposed development of a student village, new highway access, landscaping and associated infrastructure.
-

Decision

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

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. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities which includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead and not reviewing a case promptly following the lodging of an appeal against refusal of planning permission.
4. In determining a planning application planning judgement is required and this led Council officers to recommend approval of the reserved matters subject to conditions. Council Members are not obliged to agree with the recommendations put before them, however, the reasons for doing so must be supported by robust objective evidence.
5. I acknowledge that the views of the Principal Public Space Officer (Landscape) is set out in the officer's report to Planning Committee and whilst they have alluded to the potential effect on biodiversity, it is apparent that their concerns relate to a broader range of issues including landscape character and visual amenity rather than specifically relating to the impact of the proposal upon

bats. Likewise, whilst the Council's Ecologist concluded that in their opinion the cumulative impact would be harmful, they also suggest the submission of further details to address some of their concerns, including in relation to internal light spill.

6. Having regard to the consultation comments referred to in the Council's costs rebuttal and the reason for refusal I am of the view that it is somewhat of a long shot to suggest that they were sufficient to lead members to refuse the reserved matters on the basis of hedgerow fragmentation, light spill and shading. Whilst Planning Committee were entitled to take a different view, the Council did not substantiate its reason for refusal with any substantive evidence.
7. Council officers suggested a condition requiring submission of a scheme to mitigate and manage the impact of light spill would have enabled the development to proceed. This aligns with advice in paragraph 55 of the National Planning Policy Framework (the Framework) which requires local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
8. The Council's cost rebuttal suggests that the condition would not be sufficient to overcome the reason for refusal. However, I am satisfied that such a condition would meet the requirements of Framework paragraph 57, including that it would be necessary, reasonable and enforceable. Since planning permission was refused on a planning ground capable of being dealt with by conditions, the Council has behaved unreasonably in this regard.
9. As set out in my decision it would not be possible to develop the appeal site and avoid completely harm to the natural environment given that the principle of development has been established under the outline planning permission. It is evident that the survey work undertaken between 2016 and 2024 provides a detailed and robust assessment of bat activity and the assemblage of bats on the site. This is further supported by the appellant's lighting spill evidence.
10. I acknowledge that planning professionals and expert witnesses do and will have differing professional opinions. However, the Council's position, set out in the Ecology Statement, that there should be no impact upon bats is untenable given the principle of development has already been established, in the full knowledge of the presence of bats on site, and taking into consideration the 'mitigation strategy' outlined in the Framework. The Council's criticism of the appellant's light spill and bat activity evidence is largely unsubstantiated and fails to provide any form of objective analysis of the submitted evidence or the mitigation measures proposed.
11. Both main parties are signatories to the Statement of Common Ground (SoCG) which, amongst other things, establishes that the suggested conditions meet the statutory tests and guidance in the Framework. There is also agreement that with mitigation dark corridors can be secured through the site and that the scheme presented at reserved matters provides a betterment over the parameters established at outline stage in respect of a number of aspects of the scheme.
12. Despite the Council suggesting otherwise there are notable disparities in their case in respect of the alleged impact of the proposed development upon bat species when taking into account the agreement matters in the SoCG, and the

contents of the Council's Statement of Case, Ecology Statement and their case presented at the Hearing. Furthermore, the Council's evidence did not go into any detail when it alleged harm in respect of shading.

13. In my judgement, the Council's evidence in respect of the potential impact upon bat species and criticism of the appellant's evidence lacks coherence and substance. Their case fell a long way short of substantiating its claim that the development would be unduly harmful. Overall, the evidence provided in relation to the reason for refusal by the Council was vague, generalised and not supported by objective analysis.
14. As seen by my decision, in the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. Therefore, the Council acted unreasonably by refusing the reserved matters application. This constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

16. 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 Falmouth Student Village Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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 agreement as to the amount.

B Thandi

INSPECTOR