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## Costs Decision

Site visit made on 19 November 2024

**by T Gethin BA (Hons), MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 January 2025**

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### **Costs application in relation to Appeal Ref: APP/N1160/W/23/3335046 Land at Petersfield Close, Plymouth PL3 6QP**

- 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 Mr Adrian Cottenham for a full award of costs against Plymouth City Council.
  - The appeal was against the refusal of planning permission for Erection of four dwellings with associated landscaping and construction of vehicular access (resubmission of planning application ref:22/00651/FUL).
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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. The applicant considers that the Council acted unreasonably by acting contrary to or not following well established case law; not determining similar cases in a consistent manner and not granting permission for a scheme that is the subject of a recently expired permission; persisting in objections to elements of a scheme which an Inspector has previously indicated to be acceptable; making inaccurate assertions about a proposal's impact; and preventing or delaying development which should clearly be permitted.
3. As established by the courts, the weight to be given to a particular consideration is a matter for the decision maker's discretion. In this case, the fallback scheme rests on a planning permission granted some 60 years ago; and further time had elapsed since later permissions/decisions were made on and near the site with no substantive evidence that the fallback scheme was being progressed. It was therefore not unreasonable for the planning committee to question, in their judgement, whether the fallback scheme was more than a merely theoretical prospect. The planning history of the site does not lead me to a different view. The Council's appeal statement and the committee discussion also demonstrate that, rather than discounting it, the fallback scenario was considered as part of the decision. Overall, it is clear that the Council treated it as a material consideration and accepted it was possible; where the Council differed from other decisions was in ascribing it lesser weight on the basis of, for example, the further time elapsed and the construction of the additional dwelling on Petersfield Close being progressed via a new, separate permission.

4. Accordingly, albeit questioning the likelihood of the fallback scheme actually being implemented, it seems to me that the Council broadly approached their decision on the basis that there was a fallback use and that it was a more than merely theoretical prospect. Whilst I have come to a different view as to the level of weight the fallback scenario should be afforded, the Council was not unreasonable to ascribe a different weight based on the reasons given. Although the available evidence indicates that this was not mentioned during the committee meeting, the Council's ultimate decision was also made in light of the detailed comparison in the Officer's Report between the appeal proposal and the fallback. The lack of discussion at the meeting on this point does not mean that the Council did not take it into account when making its decision.
5. A similar scheme was permitted by the Council in 2018. However, that permission was granted over four and half years (and lapsed over two and half years) before the planning application now the subject of the appeal was submitted, and over five years before the Council made its decision on the appeal proposal. During that time, the new local plan was adopted (almost a year after the granting of the 2018 permission), national planning policy was revised several times and new design guidance was published. It seems likely to me that the site's biodiversity value would also have evolved. Consequently, although the subsequent making of the Tree Preservation Order was not particularly relevant, material changes in circumstances did occur during that not-inconsiderable period. In coming to this view, I have taken into account that the emerging local plan was at a relatively advanced stage and given significant weight at the time of the 2018 permission.
6. The Inspector of appeal ref 2055593 concluded that highway safety was not a reason to dismiss the proposed house in that case because it occupied one of the plots within the extant permission. The appeal proposal would similarly not add to the existing permission and would provide two fewer dwellings than could be built in the same area under the extant permission. It has also been put to me that the appeal proposal would therefore result in fewer traffic movements compared to the fallback scheme. Nevertheless, the Inspector for that appeal determined that highway safety was not a reason to dismiss that appeal based on the matter of weight; and as set out above, it is for the decision maker to decide what weight to give to the material considerations in each case. It is also relevant that the appeal was determined some 16 years ago and the Inspector did have concerns about the adequacy of the junction and found conflict with a relevant local policy.
7. The applicant's Biodiversity Net Gain (BNG) Comparison sets out that it does not present percentage change in relation to the existing baseline conditions at the site. Nevertheless, producing a report covering BNG is somewhat confusing given that neither the appeal proposal nor the fallback scheme would result in an actual net gain in biodiversity. On the basis that the subject matter related to net gain, the Council's overall critique of it was not obviously erroneous or unreasonable.
8. The approved layout plan under the fallback scenario does show limited trees/areas of woodland, and it appears that the developer could remove much of the site's existing habitat under the extant permission. Nevertheless, the limited detail shown on the approved layout plan and the position of the approved units in relation to existing trees means that neither of the main parties' arguments as to the actual/likely level of habitat (including woodland)

- on the site under the fallback scenario are obviously wholly unjustified or irrational. It also appears that the BNG report includes an area identified as a wildflower meadow on the planting plan for the appeal proposal as woodland habitat. Although that area is not identified as modified grassland, and some trees and large shrubs are shown in it, it seems to me that the report cannot therefore be wholly relied upon as to the actual amount of woodland habitat that the appeal proposal would provide.
9. Neither parties' findings and conclusions on the topic are therefore entirely convincing or indeed wholly unsupported and inaccurate. In addition, although the appeal proposal is not subject to statutory BNG, it was not unreasonable for the Council to identify Natural England's small sites metric as the most appropriate method to measure net gain; and local and national policy do seek all development to provide biodiversity enhancement/net gain. As such, it was also not unreasonable to consider the net gain/enhancement issue more widely than solely through the approach adopted in the BNG report.
  10. The Council's overall concerns and allegations relating to biodiversity and protected species did therefore not stem from misleading or unreasonable concerns. My finding that the submitted ecological information was sufficient does not change this. The available evidence also indicates that the Council's reference to 80% habitat loss stemmed from information provided in an earlier version of the applicant's Ecological Impact Assessment; and whilst the mitigation and compensation measures proposed as part of the development may not have been discussed during the committee meeting, the Officer Report provided details on that.
  11. The appellant's concerns and frustration about their difficulty to engage with the Council's relevant team/officer on the matter and previous actions relating to other (earlier) discussions and planning applications do not lead me to a different conclusion. It is also not unusual for experts to disagree on technical matters. Accordingly, the Council was within its rights to identify its concerns that some of the surveys/ecological reports were, in its opinion, not compliant with certain aspects of relevant guidance and standards.
  12. The fallback scheme is a relevant consideration in determining the appeal proposal. Whilst the weight afforded to the matter by the Council was less than the appellant may have expected, the Council did take the matter into account and it was not unreasonable for the Council to take the approach – and give it the weight – that it did. Although I have allowed the appeal and granted permission, I found that the proposed development conflicted with the development plan as a whole and there was nothing before me which demonstrated that the development proposed should clearly have been permitted. As such, whilst the appeal has clearly resulted in costs for the applicant, the costs incurred cannot therefore reasonably be described as being unnecessary or wasted in this instance.
  13. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

*T Gethin*

INSPECTOR