
Costs Decision

Inquiry held on 15 to 18 March 2016

Site visit made on 16 March 2016

by Stephen Roscoe BEng MSc CEng MICE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 May 2016

Costs application in relation to Appeal Ref: APP/D0840/W/15/3006077 Land South of St George's Road, Hayle

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Linden Homes South West for a full award of costs against Cornwall Council.
 - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of its decision within the prescribed period on an application for planning permission for a residential development of 222 dwellings, associated public open space and the provision of land to facilitate the expansion of Penpol Primary School.
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Decision

1. The application is refused.

Submissions

2. The application and the response from the Council were submitted in writing during the Inquiry with additional comments from the appellant made orally. The application related to the substance of the matter under appeal.

Reasons

3. Planning Practice Guidance (PPG)¹ advises that costs may only 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.

Unreasonable Behaviour and Unnecessary Expense

4. The Council accepts that it does not have a five year housing land supply, and its appeal evidence considers the balance between heritage impact and public benefit in accordance with the NPPF. It is a subjective judgement, and the Council's decision on a generally duplicate application, which led to the putative reasons for refusal for this appeal, did not follow the officers' positive recommendation. The Council is however not bound to accept its officers' recommendations, and it is not unreasonable for the Council not to follow the line of advice given to applicants in pre-application discussions on the appeal planning application.

¹ Ref: 16-030-20140306

5. The Council's appeal evidence sufficiently addresses the heritage and benefit balance, where it acknowledges the acute housing need in the area, and the Council has taken into account other material considerations prior to, and during, the Inquiry. Statutory bodies have an important role in the planning system, and it was not unreasonable for the Council to rely on the advice provided by Historic England (HE) in relation to the Cornwall and West Devon Mining Landscape World Heritage Site (WHS). Indeed, to do so avoided wasteful duplication and furthermore the appellant did not question the professional competency of the HE witness.
6. I therefore consider that the Council's failure to determine the application has not delayed development that should clearly be permitted, having regard to the development plan, national policy and other material considerations².
7. The Council has permitted a large quayside retail development, occupied by Asda, within the WHS. This is however very different to the appeal proposal. There is therefore the potential to come to a different heritage and public benefit balance, and it is thus not unreasonable for the Council to have come to a different view compared to that on the retail development.
8. The Council has also permitted a residential development, being taken forward by Bovis, adjacent to the Copperhouse area of the WHS. Again, the circumstances that prevail are different to those at the appeal site. This is because, in my view, there is greater separation between the Bovis site and the WHS. The interactions between the two do not therefore have the same effect on the legibility of Copperhouse as would be the case with the appeal proposal. Furthermore, the Bovis site does not have the heritage qualifications as have been applied to the area which includes the appeal site in the Council's Hayle Town Framework document.
9. I therefore consider that the Council has not failed to determine, or adopt a position at appeal on, similar cases in a consistent manner³.
10. The Council's emerging local plan is in preparation, and there is no reasoned evidence to suggest that the Council is not fully engaged in this process. On this basis, the Council's failure to have a development plan in place is no justification here for an award of costs. The Council's stated position in relation to development on the appeal site is set out in the Hayle Town Framework. The urban expansion area within which the appeal site is situated is clearly qualified in terms of heritage implications requiring development to be appropriate in relation to the WHS. It is such heritage implications that have been considered under this appeal. The use of the term appropriate is consistent with the WHS management plan, which warns against inappropriate development which could affect the significance of the WHS. This qualification is therefore both clear and reasonable, in that it is not saying no to development at all.
11. I acknowledge that there is some inconsistency between the Hayle Town Framework document and the Council's case, in that its case refers heavily to the open countryside on the appeal site. It is however a possibility that another less dominant or obtrusive proposal could come forward, which could retain some of the effect of the open countryside in specific parts of this

² PPG Ref: 16-049-20140306 Bullet Point 1

³ PPG Ref: 16-049-20140306 Bullet Point 7

- qualified urban expansion area. The Council's position is therefore not so unreasonable as to justify an award of costs.
12. The appeal site is also identified as having a potential for housing within the Council's SHLAA. The SHLAA is however again qualified as being subject to development management and planning processes, and I do not see the presence of the appeal site in the SHLAA and the Council's position at appeal as being a valid justification for an award of costs.
 13. The Council has jointly entered into a Statement of Common Ground during the appeal procedure in order to focus the issues in dispute. It has also identified putative reasons for refusal from a generally duplicate application. In these matters, I consider that the Council has been both positive and proactive in terms of its approach to the appeal in accordance with the Development Management Procedure Order 2015.
 14. I therefore do not consider that the Council could have adopted a more helpful approach which would have resulted in the appeal being avoided or the issues to be considered being further narrowed⁴.
 15. In view of all of the above points, I do not consider that the Council's behaviour has been unreasonable in the context of advice in PPG⁵. It therefore follows that the applicant has not incurred any unnecessary expense.

Conclusion

16. Having taken into account all other matters raised, none result in an alternative view. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in PPG, has not been demonstrated and that an award of costs is not justified.

Stephen Roscoe

INSPECTOR

⁴ PPG Ref: 16-049-20140306 Bullet Point 12

⁵ Ref: 16-049-20140306