



Council of the
ISLES OF SCILLY

FORMAL RESPONSE

TO

APPLICATION FOR AWARD OF COSTS

AT

MEN-A-VAUR, CHURCH ROAD, ST MARYS

REFUSED ON 8TH MARCH 2019

APPEAL REFERENCE APP/Z0835/W/19/3225058

30TH MAY 2019

This statement is submitted to the Inspectorate on behalf of the Council of the Isles of Scilly as a formal response to the application for costs letter submitted by the appellant, dated 19th March 2019.

Introduction

National Planning Practice Guidance (NPPG) advises that costs can be awarded where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. It is stated that the aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case;
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay;
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

The guidance is that Costs may be awarded where:

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Important Definitions

It is important to establish first what the word “unreasonable” means in terms of an application for costs. NPPG states that the word “unreasonable” is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774. Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

It is also considered important to establish what counts as unnecessary or wasted expense. NPPG states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses. Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.

Case Against Application for Costs

It is noted that the appellant is seeking a partial award of costs based on the asserted wasted expense in addressing matters relating to two of the three refusal reasons. The appellant acknowledges that the first refusal reason, which relates to overlooking, was an exercise in planning judgement, although it is noted that the appellant does not agree with this particular judgement.

The application for partial award of costs relates to the other two reasons for refusal, which relate to the loss of biodiversity interests and the impact on the access to Branksea Close as a result of the proposed development. The appellant feels that the Council has behaved unreasonably when reaching the decision to refuse the application on these grounds and this has led to unnecessary costs being incurred.

Looking at the second reason for refusal, and the first ground of the application for an award, the appellant suggests that the following behaviour has been shown by the Council when imposing this condition:

- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and
- refusing planning permission on a planning ground capable of being dealt with by conditions; and
- not determining similar cases in a consistent manner.

The appellant refers to a "similar" planning application, which was approved by the Council Committee in July 2018 with a condition similar to Condition 7 of the Committee report for the Men-a-Vaur application. This previous decision is being presented as the Council not determining similar cases in a consistent manner. However, the Council would assert that this "similar" planning application did not involve a site that was not the same or substantially the same as the one that is the subject of the current appeal. As such, it is unreasonable to draw direct comparisons between the two applications and state that the Council must determine this refused application with the same conclusion as the referenced application. Each planning application should be judged on its own individual merits and it is not unreasonable for the Council to have taken this approach when determining this particular application.

The appellant asserts that the reason for refusal given was vague, generalised and was not based on any objective analysis. The appellant suggests that the Council should not have based the second reason for refusal on the policies of the Isles of Scilly draft Local Plan. As set out in the Council's accompanying appeal statement, the draft Local Plan is in an advanced stage of adoption with it due to be submitted to the Inspectorate for examination. In addition to this, no significant objections have been received in relation to the policy referenced in the second refusal reason, Policy OE2. In fact, the responses received have been generally supportive with minor suggestions made for amendments. As such, the draft Local Plan and in particular, Policy OE2, is considered to carry significant weight in the determination of an application, in accordance with Paragraph 48 of the National Planning Policy

Framework (NPPF). This leads Officers to conclude that the second reason for refusal referencing a draft Local Plan policy and not an adopted Local Plan policy was well founded and not contrary to national legislation, particularly as the adopted Local Plan is largely silent on this specific matter.

In addition to the above, it is considered that the wording of the condition is not vague or generalised as it clearly sets out the reasoning for refusing the application and makes specific reference to a policy of a draft Local Plan in an advanced stage of adoption, together with a specific Paragraph from the NPPF. The loss of biodiversity and the considered inadequate ability to compensate for that loss is a material consideration and relevant to both local and national planning policy. It is clear that the site is capable of providing habitats for various protected species, such as bats and nesting birds. The appellant has not provided documentation to suggest otherwise.

The appellant has also asserted that the second refusal reason could have been avoided through the attachment of appropriate conditions. It is acknowledged that Officers did include such conditions as part of the Committee report considered by Members. However, Members came to a decision to the contrary and felt that this was a matter that could not be mitigated through conditions. This is a matter of planning judgement and it is considered that it was not unreasonable for Members to come to this conclusion.

Turning to the third reason for refusal, and second ground of the application for an award, the appellant asserts that the following behaviour has been shown by the Council when imposing this condition:

- 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; and
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

It is considered that the third reason for refusal can reasonably be considered to relate to transport matters and amenity matters. Members took into account the road network around the application site, together with the context of the site in relation to access and amenity matters. It is considered that Members were reasonable in coming to the judgement that these matters in relation to the proposed development were unacceptable and, therefore, formed a reason for refusal. It is considered that the reason for refusal is clear and concise, and the matters raised can be referred back to both local and national planning policy. It is considered important to note that Members made a judgement on material planning considerations and felt that the local planning policies did not lead them to the conclusion that the application was acceptable. This was a planning judgement and is not considered to be unreasonable behaviour.

Conclusion

In simple terms, whatever the outcome of the appeal, the Council maintains that its refusal of the application was entirely reasonable, that the reasons for refusal were clear and relevant and that the reason has been substantiated by the Council's accompanying appeal statement.

For the reasons outlined above, it is respectfully requested that the application for a partial award of costs against the Council in respect of this appeal is dismissed.

Kieran Reeves *MRTPI*

Planning Officer

On Behalf of the Council of the Isles of Scilly