



Appeal Decision

Site visit made on 27 June 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/D0840/W/22/3308876

Land east of Meneth, Bonallack Lane, Gweek, Helston TR12 6UJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by MJL Developments (Cornwall) Ltd against the decision of Cornwall Council.
 - The application Ref PA21/05783, dated 26 May 2021, was refused by notice dated 26 July 2022.
 - The development proposed is residential development of eleven dwellings (7 affordable and 4 open market).
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Decision

1. The appeal is allowed and planning permission is granted for residential development of eleven dwellings (7 affordable and 4 open market) at Land east of Meneth, Bonallack Lane, Gweek, Helston TR12 6UJ in accordance with the terms of the application, Ref PA21/05783, dated 26 May 2021, and subject to the conditions set out in the schedule to this decision.

Applications for costs

2. An application for costs was made by MJL Developments (Cornwall) Ltd against Cornwall Council. This application is subject of a separate decision.

Preliminary Matters

3. The application was originally made for residential development of ten dwellings (6 affordable and 4 open market) but was amended prior to the Council's determination. I have determined the appeal on the basis of the amended description for eleven dwellings. This is consistent with the description of the development on the Council's decision notice and on the appeal form. The amended description provided in the banner heading above therefore clearly describes the development proposed and does not cause injustice to any parties.
4. At the time of my site visit the gate into the appeal site was locked. Whilst I was not able to walk onto the site, I was able to view the site from its access and from a number of wider locations. I was satisfied that I could see all that I needed to see.
5. As the appeal is located within Cornwall Area of Outstanding Natural Beauty (AONB), I have had regard to the purpose of conserving and enhancing the natural beauty of the area as set out in section 85 of the Countryside and Rights of Way Act 2000 (as amended). The development plan and the National Planning Policy Framework (the Framework) also seek to protect such

designated landscapes, recognise the intrinsic character and beauty of the countryside, and attach great weight to conserving and enhancing the landscape character and scenic beauty of AONBs, which have the highest status of protection in relation to these issues.

6. Interested parties' representations raised matters concerning landownership. When the application was made, ownership Certificate A was signed indicating that the applicant was the owner of any part of the land to which the application related. At appeal stage, the appellant advised that they did not own all or part of the appeal site, and Certificate C or D has been signed.
7. However, the purpose of the ownership certificates is to ensure that all those who may have a legal interest in the land are alerted to a proposed development. From the evidence before me, notice of the appeal was published in a local newspaper as required under the Site Ownership Certificate process. In these circumstances, I am satisfied that no prejudice has been caused by the completion of the incorrect ownership certificate at application stage. Accordingly, this matter has no bearing on my assessment of the appeal.
8. The site is within the Zone of Influence of the Fal and Helford Special Area of Conservation (SAC). This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Although not an issue raised by the Council in its reasons for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the European Site. As such, it is necessary to consider this matter as a main issue.
9. A planning agreement under s106 of the Town and Country Planning Act 1990 (as amended) has been submitted that includes obligations, including affordable housing and a financial contribution towards the cost of strategic access management and monitoring near and within the SAC. The Council is a party to the agreement. I will consider the planning agreement later.

Main Issues

10. The main issues are the effect of the proposed development:
 - on the character and appearance of the area, with particular regard to the Cornwall Area of Outstanding Natural Beauty (AONB); and,
 - on the integrity of the Fal and Helford SAC.

Reasons

11. The Cornwall and Isles of Scilly Landscape Character Study (LCS) identifies key characteristics of the surrounding area, which is within landscape character area CA09 Helford Ria. These include, as well as other aspects, steep sided valleys covered in dense, mature broadleaved woodland, pastoral or mixed farmland with trees on the gently undulating plateau, and clustered settlement pattern with small often isolated farms and nucleated villages along the creeks. An increase in demand for housing is identified as a pressure in the LCS.
12. The appeal site is a parcel of undeveloped agricultural land at the edge of Gweek. The field has an existing access from Bonallack Lane and slopes down toward bungalows along the upper part of the Meneth road. It is bounded by

- established hedgerows and trees, with the southern boundary partially open to the adjacent land. Due to its open and verdant character, the appeal site provides a positive contribution to the landscape setting at the edge of Gweek. The contribution of the site is however lessened by its context and position between dwellings along Meneth and Bonallack Lane, which means that the site does not have an intimate association with the wider landscape setting.
13. Nonetheless, the proposal would introduce a residential development of eleven dwellings over a sloping and elevated parcel of land. This would change the character of the site and reduce its openness and greenery in this area. As a result, the scheme would form a noticeable encroachment of built development into the AONB landscape at the edge of the settlement. The appeal scheme would therefore erode the settlement's rural setting.
 14. As demonstrated in the submitted Landscape and Visual Impact Assessment and as observed from my site visit, whilst a number of public views of the development would be achieved from within the village, wider views of the development would be more limited. Nonetheless, the two-storey nature of the majority of the proposed dwellings and the depth of development would make it more noticeable as new development. It would be visible from within the village, including from the Seal Sanctuary car park, Chapel Hill and the upper and lower roads of Meneth.
 15. However, the houses proposed would be characteristic of other housing, including in terms of massing and scale, seen elsewhere in Gweek. In this respect the new housing would be in keeping with their surroundings. The appearance of the dwellings would be softened using slate cladding on the upper floors, which would be visually recessive. Furthermore, it would be seen in context of other buildings including those at a higher elevation on Bonallack Lane, typically with a backdrop of ground or vegetation, which would temper the influence of the appeal scheme on the wider landscape.
 16. Whilst the appeal scheme would introduce a greater depth of development along Bonallack Lane, the development would respond to the local topography and would be comparatively well spaced with a relatively low density. It would retain the boundary hedges and additional planting would be provided, including notably along the southern boundary. It would be seen as an extension to the Meneth residential area and would generally be experienced in the context of the existing edge of the settlement and, as such, the proposal would appear as contained within the river valley.
 17. The degree of harm would therefore be relatively localised with the loss of the open, undeveloped and verdant character and with the replacement by built development. Given the context of the site and its relationship to the existing built form of the settlement, the harm to the character and appearance of the area, with particular regard to the AONB would be limited in extent.
 18. Given the above and that the appeal scheme would have a moderate impact on the purpose of conserving and enhancing the natural beauty of the AONB, the proposal would not represent major development within the AONB with respect to the Framework paragraph 177 and footnote 60. Nevertheless, the proposed development would, for the reasons above, harm the character and appearance of the surrounding area and would not conserve and enhance the landscape character and natural beauty of the Cornwall AONB.

19. Consequently, the scheme would cause moderate harm to the character and appearance of the area and the AONB. Thereby it would conflict with the relevant provisions of Policies 1, 2, 3, 9, 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030 (CLP). These policies, amongst other things, set out the Council's approach to decision making, give great weight to conserving the landscape and scenic beauty of the AONB, and require proposals to maintain and respect local distinctiveness and special character of Cornwall and conserve and enhance the landscape, character and natural beauty of the AONB. The proposal would also be inconsistent with Policies PD-P7 and PD-P11 of the Cornwall AONB Management Plan 2022-2027 (AONB MP) which seeks to ensure development maintains local distinctiveness and does not compromise the special qualities and characteristics of the AONB designation.
20. CLP Policy 21 refers to the best use of land and existing buildings, the appeal proposal would not conflict with this policy.

Fal and Helford SAC

21. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the SAC. The submitted evidence, including the Council's European Sites Mitigation Supplementary Planning Document, July 2021 (SPD), indicates that certain types of development, including all new housing, within 12.5 kilometres of the SAC add to increasing recreational pressure impact at the designated site, which has been identified as vulnerable to such threats. Alone and/or in combination with other relevant development in the area, the proposed development would therefore be likely to have a significant effect on it. Accordingly, under the Habitats Regulations, Appropriate Assessment of the implications of the project for the designated site in view of its conservation objectives is required. In accordance with Policy 22 of the CLP, appropriate mitigation would, where necessary, also need to be secured.
22. The qualifying features of the SAC include saltmarsh, intertidal mudflats, subtidal sandbanks, large shallow inlets and bays including habitats such as reefs and rocky shores, estuaries, and reefs. The conservation objectives for the site seek to ensure that its integrity is maintained or restored as appropriate and that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features. The SAC also has a Site Improvement Plan which, amongst other things, details the current and predicted issues affecting the condition of the site's features, which includes public access/distribution, and the actions required to improve the condition of the features.
23. The submitted evidence indicates that without mitigation it would not be possible to determine that the residential accommodation proposed would not adversely affect the integrity of the designated site through indirect effects of increased recreational impacts on its interest features. However, I note that Natural England, as the relevant conservation body, was involved in the preparation of the SPD and has agreed that the adverse impacts of development can be mitigated by managing access to or within the SAC, managing visitor behaviour near and within it, and making the designated site more resilient to recreational pressures through Strategic Access Management and Monitoring (SAMM).

24. Based on the submitted evidence, the securing of the necessary mitigation would be sufficient to mitigate the effects of the development on the designated site. In this case a s106 agreement between the Council and the appellant has been submitted. This would provide a financial contribution of £352 per dwelling to be made in accordance with the mitigation strategy.
25. The s106 agreement allows me to be certain that the proposed development would not adversely affect the integrity of the designated site. It would adequately secure the delivery of mitigation measures to prevent harmful effects of recreational disturbance from occurring as a result of the appeal scheme.
26. On this basis and following consultation with Natural England, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the designated site would not be adversely affected by the proposed development. Consequently, I find that the proposal would accord with the Habitat Regulations and Policy 22 of the CLP.

Planning Agreement

27. A signed and dated planning agreement has been submitted which includes obligations in respect of affordable housing and a financial contribution to be made in accordance with the mitigation strategy in the SPD.
28. The proposal is advanced on the basis that it is an affordable housing scheme compliant with the requirements of Policy 9 of the CLP. The requirement is that the starting point for the consideration of a scheme is that it should deliver 100% affordable housing with a decrease in this proportion only permitted to achieve viability for the development down to a minimum of 50% affordable housing. The obligations are necessary to ensure that the development would be delivered to accord with the requirements of an affordable housing scheme pursuant to Policy 9 of the CLP.
29. The obligation for a financial contribution as set out above is necessary to secure the delivery of mitigation measures to prevent harmful effects of recreational disturbance from occurring on the SAC as a result of the appeal scheme.
30. I am satisfied that the obligations both individually and collectively are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The obligations, therefore, comply with the requirements of Regulation 22 of the Community Infrastructure Levy Regulations 2010 and the Framework. These are matters which I afford full weight.

Other Matters

31. Objections have been received which raise a range of other matters not examined elsewhere in this decision. The Council's committee report confirms that the Affordable Housing Team supported the application. I appreciate that the housing scheme would be outside the settlement, but the provision of affordable housing schemes adjacent to the settlement is expressly allowed for in Policy 9 of the CLP. Whilst other housing schemes have been built since January 2020 and there may be other schemes in the pipeline, on the evidence before me, there is a demonstrated need for the proposed affordable housing within the parish.

32. In terms of highway safety, whilst there is a lack of pavement alongside the access road, the Highway Engineer has examined the details and has concluded that subject to appropriate conditions in any approval, no objection is raised. I place substantial weight on this advice. The application was not refused for highway reasons, and I have found no reason to disagree with the Council on this matter.
33. Moreover, whilst local services and facilities are limited, the site would be within easy reach of these, and the proposed development would meet with the policy approach for the delivery of affordable housing, which is a component of the overall spatial strategy to deliver residential development across the development plan area. As such, the proposal accords with the overall intentions of the Local Plan in respect of location of development, including the policy to maintain the dispersed development pattern of Cornwall and to provide homes and jobs based on the role and function of each place.
34. The site has been subject to previous appeal decisions which were dismissed. The previous schemes also proposed the introduction of dwellings. Whilst I have taken the previous Inspectors findings into account in my decision, I note that the previous schemes involved a different number of dwellinghouses, and I have reached my own findings based on the circumstances of the present case.
35. Given the proximity of the appeal site to existing built form, and therefore existing sources of light, the appeal scheme, whilst extending development into a previously undeveloped area, is unlikely to result in significant increase in light pollution.
36. I note concerns regarding impact on neighbours living conditions. However, the proposed dwellings would be drawn away from boundaries and would have a comparable, if not generous, separation from neighbouring properties than typically prevails here. Moreover, units to the west of the site, which would be closest to the residential neighbours, are single story or have been designed to limit views westwards. Consequently, the living conditions of those nearby would not be unacceptably affected by the appeal scheme.
37. The site is within Flood Zone 1, although I note the anecdotal comments relating to flooding. The evidence available, including the submitted Flood Risk Assessment & Surface Water Drainage Strategy, demonstrates that there is capacity to manage surface water runoff from the proposed development on site. Planning conditions could be imposed requiring further drainage scheme details which would ensure that the proposal successfully manages foul and surface water. I have little evidence before me to indicate that an additional eleven dwellings would result in an unacceptable impact on the local infrastructure.
38. The dominant habitat within the appeal site is semi-improved grassland. The existing trees and hedgerows would be retained, and a green buffer area would be provided at the western boundary. Biodiversity mitigation and enhancement measures have been set out in the Preliminary Ecological Appraisal (PEA) submitted with the application. These measures could be secured by condition. As such, the proposal would not lead to harm to wildlife. The committee report advises adequate biodiversity net gain would be achieved. On the basis of the evidence before me, I conclude that issues in respect of wildlife and biodiversity can be addressed through appropriate conditions.

39. I note the comments regarding the Council's handling of an application on an adjacent site. However, these matters are not relevant to the determination of this appeal and has not affected my findings on the planning merits of the scheme.
40. There could be some local impact during construction work, but this would only be for a limited period and not be a permanent intrusion. I have little basis to consider that bin storage would not be accessible. An economic viability assessment was submitted with the application. The Council does not dispute the assessment. Whilst the assessment considers the scheme initially presented to the Council, I have no basis to consider the appeal scheme could be delivered with a greater balance of affordable dwellings.
41. I note that many of these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I recognise the concerns of residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters. I have considered this appeal proposal on its own merits.

Planning Balance

42. Applications for planning permission are required to be determined in accordance with the development plan unless material considerations indicate otherwise. This requires an assessment as to whether the scheme would comply with the policies of the development plan when considered as a whole together with an analysis of other material planning considerations.
43. A key development plan policy with this appeal is Policy 9 of the CLP. This policy concerns rural exceptions sites and allows development proposals outside but adjacent to the existing built-up area of smaller towns, villages and hamlets, where the primary purpose is to provide affordable housing to meet local needs.
44. The proposed development would harm the character and appearance of the surrounding area and the AONB. The proposal therefore conflicts with the relevant provisions of Policies 1, 2, 3, 9, 12 and 23 of the CLP where they seek to conserve the character and appearance of the surrounding area, as well as relevant provisions in the Framework and the AONB MP. Nevertheless, the harm identified would be relatively localised and moderate. In giving great weight to conserving and enhancing the landscape and scenic beauty of the AONB, the totality of the harm would therefore not be significant.
45. There would be a number of benefits provided by the appeal scheme. This includes the provision of additional housing, including affordable housing of a type and mix consistent with local needs, and which the submitted evidence indicates is needed, in an area with access to local goods and services. This weighs substantially in support of the scheme. There would be social and economic benefits during construction and subsequent occupation. In addition, the scheme would provide biodiversity net gain, secured by condition.
46. Great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB, which has the highest level of protection. Significant weight is also given to the conflict identified above with the CLP and the inconsistencies with the provisions of the Framework and the AONB MP.

However, in this case, the above material considerations outweigh the localised and limited harm identified. This indicates that planning permission should be granted, notwithstanding that the development does not accord with the above listed CLP policies and the great weight given to conserving and enhancing the landscape and scenic beauty of the AONB.

Conditions

47. The conditions set out in the accompanying schedule are based on those suggested by the Council. These conditions have been considered against the tests of the Framework and advice provided by Planning Practice Guidance (PPG) on conditions. I have undertaken some minor editing and rationalisation in the interests of precision and clarity. Those included in the schedule are found to be reasonable and necessary in the circumstances of this case. I have limited the use of pre-commencement clauses to where they are essential for the condition to achieve its purpose.
48. The statutory time limit is required and a condition specifying the approved plans is necessary in the interests of certainty. I have amended the list of approved drawings and omitted reference to drawing number J-1768 3001C because this relates to a scheme of ten houses and is not therefore precise. Accordingly, I have also amended and combined conditions relating to surface and foul water as explained below.
49. In the interests of the character and appearance of the area including the AONB, a condition in respect of materials is necessary, and a condition to secure appropriate landscaping is required. The latter needs to be a pre-commencement condition given the integral nature of the landscaping elements to reducing the visual impact of the development in the AONB.
50. In the interests of protecting existing trees and hedgerows a condition requiring tree protection measures is necessary. Conditions relating to external lighting and street lighting are necessary in the interests of biodiversity and the character and appearance of the area, and to ensure safe and satisfactory access.
51. The PPG indicates that conditions removing permitted development rights should only be used in exceptional circumstances. Nevertheless, the nature of the site, and its position in relation to sensitive features indicates that in this case such a condition is necessary and reasonable. This would be in the interests of the character and appearance of the area and to ensure that the affordable dwellings remain at a size where they will be able to meet future local needs. However, I have not included the restrictions suggested by the Council in relation to any other alterations to the roof of a dwellinghouse (Class C) and the erection or construction of a porch (Class D). This is because such works could only be of a minor nature and would thus not significantly affect the size or appearance of the appeal proposal and its effect on its surroundings.
52. In the interests of wildlife and biodiversity a condition requiring the development be carried out in accordance with the PEA is necessary. I have amalgamated and amended conditions suggested by the Council regarding disposal of foul water and surface water. This is necessary to ensure precise details are agreed relating to the appeal scheme comprising eleven dwellings. I have made this a pre-commencement condition as it is essential that surface

and foul water drainage can be adequately managed both during the construction phase and thereafter.

53. Conditions requiring adequate site visibility splays at the access, parking and turning areas and estate road carriageways are necessary in the interests of highway safety and to ensure a satisfactory means of access.

Conclusion

54. For the reasons given I conclude that the appeal should succeed.

J White

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site/location Plan 2247-MAL-A-100-000 Rev P03; Block Plan 2247-100-301 Rev P03; Proposed 2247-100-100 Rev P09; Proposed 2247-MAL-100-340 Rev P3; Proposed 2247-100-360 Rev P1; Proposed 2247-100-350 Rev P01; Proposed 2247-100-330 Rev P2; Proposed 2247-100-320 Rev P2; Proposed 2247-100-310 Rev P01; Proposed 2247-100-300 Rev P02; Proposed 2247-100-200 Rev P08; Block Plan 2247-100-015 Rev P08; Proposed 2247-100-500 Rev P07; and Proposed 2247-100-300 Rev P08.
3. No development involving the use of external materials shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
4. No development shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall provide planting plans with written specifications including: full schedule of plants; details of the mix, size, distribution and density of all trees/shrubs/hedges; cultivation proposals for the maintenance and management of the soft landscaping; hard surfacing materials; proposed finished ground levels or contours.

All hard landscaping features, including means of enclosure and surfacing materials, shall be completed and in place in accordance with the approved details prior to the first occupation of the development hereby permitted.

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice shall be given to the Local Planning Authority when the approved scheme has been completed. Any

trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

5. The tree protection measures and fencing as set out within the Tree Survey Report prepared by Objective Tree Consultancy dated 28/01/2021 and as shown on plan TPP V1 will be erected prior to commencement of any works associated with the development and be retained and maintained until the completion of the development. At no time shall any works in connection with the development, including storage, access, cement mixing, bonfires, excavations or other level changes occur within the protected area and at no time shall the protected trees be damaged in any way. The development shall be implemented in strict accordance with the agreed tree protection methods.
6. Details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is first occupied. The lighting scheme shall be implemented in accordance with the approved details and retained as such thereafter.
7. Prior to occupation of any of the dwellings hereby permitted, details of the proposed streetlighting shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be implemented in accordance with the approved details and retained as such thereafter.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no development within Classes A and E of Part 1 of Schedule 2 to the said Order shall be carried out without an express grant of planning permission, namely: The enlargement, improvement or other alteration of the dwellinghouse; The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.
9. The development hereby permitted shall be undertaken in accordance with the ecological recommendations and enhancement measures set out within section 6 of the following submitted document: - Preliminary Ecological Appraisal undertaken by Ecological Surveys Ltd; report reference PEA_MenethGweek_MJLLtd_October2020. The identified ecological enhancement measures shall be incorporated into the scheme prior to the first occupation of the development hereby permitted.
10. No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management and foul water treatment has been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - A description of the foul and surface water drainage systems operation;
 - Details of the final drainage schemes including calculations and layout;

- Confirmation from South West Water Ltd that the foul network has sufficient capacity to cater for this development;
- A Construction Quality Control Procedure;
- A plan indicating the provisions for exceedance pathways, overland flow routes and proposed detention features;
- A timetable of construction including a plan indicating the phasing of development including the implementation of the drainage systems;
- Confirmation of who will maintain the drainage systems and a plan for the future maintenance and management, including responsibilities for the drainage systems and overland flow routes.

Thereafter, the approved scheme shall be implemented in accordance with the details and timetable so agreed and the scheme shall be managed and maintained in accordance with the approved details. Details of the maintenance schedule shall be kept up to date and be made available to the Local Planning Authority within 28 days of the receipt of a written request.

11. Before any other building or engineering works are carried out on the site, visibility splays shall be provided at the site access in accordance with plan JG01 in appendix A of the Transportation Advisory Note dated 15 March 2021 and submitted in support of the application. The access shall not be brought into use until all land within the said visibility splays has been reduced to a height not exceeding 900mm above the adjoining carriageway level and thereafter no obstruction shall be permitted within the approved visibility splays.
12. Before any of the development hereby permitted is brought into use, parking and turning areas shall be laid out and constructed in accordance with approved drawing no. 100-015 Rev P08 and the said areas shall not thereafter be obstructed or used for any other purpose.
13. No dwelling shall be occupied until the estate road carriageways to be constructed in association with that dwelling has been laid out and constructed in accordance with the submitted details shown on plan 100-300 Rev P08.

End of Conditions



Costs Decision

Site visit made on 27 June 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3308876
Land east of Meneth, Bonallack Lane, Gweek, Cornwall, TR12 6UJ

- 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 MJL Developments (Cornwall) Ltd for a full award of costs against Cornwall Council.
 - The appeal was against the refusal of planning permission for residential development of eleven dwellings (7 affordable and 4 open market).
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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.
3. PPG includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, "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 "not determining similar cases in a consistent manner".
4. The applicant contends that the Council has behaved unreasonably due to it not determining similar cases in a consistent manner; 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, ignoring policies of the development plan and having concocted a reason for refusal despite the officer recommendation, without visiting the site. The Council refutes each of these claims.
5. The Council's Appeal Statement explains in some detail why the proposal was deemed to cause harm to the character and appearance of the landscape, including Cornwall Area of Outstanding Natural Beauty (AONB). The effect of the proposal on the character and appearance of the landscape and AONB requires a degree of planning judgement. The Council has explained why this application was determined as it was having regard to development plan policies and having taken into account previous decisions, including dismissed appeals relating to the appeal site, as well as having regard to the public benefits of the scheme.

6. The Council has therefore substantiated its position at appeal in relation to the proposal and its actions did not prevent or delay development which should have clearly been permitted.
7. There is little evidence that the Councillors were not familiar with the site and surroundings, and the decision not to defer for a site visit is a judgment the Committee was entitled to make. It is stated that several opposing views were expressed, and therefore I find nothing untoward in the planning officer having previously drafted a potential reason for refusal or in providing assistance to the Councillors in crystallising the reason for refusal.
8. Although I am aware of a scheme for housing on the adjacent land, that was for a much smaller scheme of housing development making comparison difficult. Hence, this is not an obvious example of a local planning authority being inconsistent in its approach to similar cases, or delaying development which should have clearly been permitted.
9. It follows that the Council did not act unreasonably with regard to consistency in decision-making. PPG advises that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
10. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that, therefore, an award of costs is not justified.

J White

INSPECTOR