

Costs Decision

Hearing held on 4 October 2016

Site visit made on 4 October 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 25th October 2016

Costs application in relation to Appeal Ref: APP/A0665/W/16/3146464 Swallow Farm, Mill Lane, Hargrave, Huxley, Chester CH3 7RQ

- 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 & Mrs Colin & Tracy Oats for a full award of costs against Cheshire West & Chester Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of a detached bungalow.
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Decision

1. The application for an award of costs is refused.

The submissions

2. The cost application was made by the appellants in writing, as was the Council's response.
3. The appellants provided an updated costs schedule to reflect the preparation costs for the Hearing, but offered no further oral submissions.
4. The Council responded that the change in procedure to a Hearing was at the request of the Planning Inspectorate.
5. The appellants made no further oral submissions.

Reasons

6. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 7. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as 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.
 8. The appellants' application for costs relates to the substantive matter listed above, with particular reference to the length of time that was taken for the application to be determined without agreeing to an extension of time with the applicant. The appellants suggest that this delay was deliberate as it meant that the Council could rely on policies within its new Local Plan.
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9. With respect to the above, the reason for refusal set out in the decision notice is complete, precise and specific to the application. It clearly identifies what the Council considers to constitute harm and states the policies of the Cheshire West & Chester Council Local Plan (Part One) Strategic Policies, adopted January 2015 (CWCLP Part One) and the Chester District Local Plan (CDLP), adopted in 2006, to which it considers that proposal would not accord. It also makes reference to a failure to accord with the National Planning Policy Framework (the Framework).
10. It will be seen from my appeal decision that I consider that the proposed development would be harmful and would not accord with the Framework or the policies in the CWCLP Part One and CDLP which the Council's decision notice identified. A specific reason, amongst others, includes that the evidence provided is not sufficient to demonstrate that there is an essential need for a rural worker to live permanently at the site in the countryside. In such circumstances, I consider that the Council did not unreasonably prevent development having regard to the development plan, national policy and any other material considerations.
11. A timescale of over 12 months for the determination of an application after its submission is unusual. It is, however, evident that the delay was somewhat influenced by the Council seeking additional information from the appellants in an effort to resolve the shortcomings of the original application. This included the appellants having provided additional information in December 2014 and February 2015 in accordance with Council requests and further correspondence between the Council and the appellants via e-mail up to 25 May 2015.
12. With regard to the timeline above, I have no reason to consider that the Council's delay was intended to ensure that the policies in the CWCLP Part One were adopted prior to the decision. In any case, the CWCLP Part One had reached a stage of preparation by the case target of 14 November 2014, whereby the policies could be given weight in accordance with paragraph 216 of the Framework.
13. Notwithstanding the above, there is no substantiated evidence before me which justifies the Council delaying a decision on the planning application during the period from 25 May 2015 until 18 September 2015. There is also no evidence that the Council contacted the appellants to provide an explanation for the delay or seek agreement for an extension of time. There was evident correspondence between the Council and a local councillor (Cllr Jones) on 27 August 2015 regarding whether the application should be referred to Planning Committee or under delegated powers. However, there is no evidence before me that justifies the delay between 25 May 2015 and 27 August 2015, or from 27 August 2015 until the decision was issued on 18 September 2015. In such circumstances, I consider that the Council behaved unreasonably in significantly delaying the determination of the application after 25 May 2015, without explanation for the delay.
14. However, the Council refused the application for the reasons that informed the main issues in the appeal decision. In such circumstances, the appellants were in a position to decide based on the Council's decision notice and planning officer report if they should pursue the appeal and must have thought they had a reasonable prospect of an appeal being allowed and planning permission granted. From that stage, despite the Council's previous unreasonable

behaviour, the appellants' costs were a matter of choice and those that should normally be expected when lodging an appeal and pursuing it to the end. They do not, therefore, fall within the definition of an unnecessary or wasted expense. Essentially, if an appeal is lodged and pursued to the end, with the Council's arguments prevailing, however unreasonable the Council was in its procedures when determining the application, the costs to the appellants of an appeal cannot be considered an unnecessary or wasted expense.

15. The appellant also expressed concern regarding the approach of the Council and Cllr Jones which led to withdrawal of a request for the application to be referred to Planning Committee. However, it is clear from the correspondence between the Council and Cllr Jones on the 27 August 2015, that Cllr Jones made an informed decision to withdraw the request for referral due to the application being recommended for refusal. In this regard, Cllr Jones had previously requested to be informed of the recommendation prior to the referral to Planning Committee to allow re-consideration. It is reasonable to conclude that Cllr Jones only intended that the application be referred to Planning Committee if recommended for approval. The approach of the Council and Cllr Jones to this matter was not, therefore, unreasonable.
16. The Council suggestion that the appellants employ a specialist agent to assist and provide advice was not unreasonable; given that such costs remain at the appellants' discretion.

Conclusion

17. Whereas I find that the application for a full award of costs by the appellants against the Council demonstrates unreasonable behaviour, this did not result in unnecessary or wasted expense in the appeal process as described in the PPG. I therefore determine that the costs application should fail.

Gareth Wildgoose

INSPECTOR

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Schedule of Appellants Costs (Costs Application)