

Costs Decision

Hearing held on 28 September 2016

Site visit made on 28 September 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 8 November 2016

**Costs application in relation to Appeal Ref: APP/N2739/W/16/3145158
Land to the northeast of Church Lane/Weedling Gate, Stutton, Tadcaster,
North Yorkshire LS24 9BS**

- 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 K Tillett for a full award of costs against Selby District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an outline application for a detached dwelling
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Decision

1. The application for an award of costs is allowed, in the terms set out below.

The submissions for Mr K Tillett

2. The application for full award of costs was made in writing. The applicant made one additional point at the Hearing. This stated that the Hearing demonstrated that the Council was able to deal with the applicant's queries relating to 5 year housing supply in a swift and succinct manner. Consequently, the issues relating to this matter could have been dealt with prior to the event with the possibility of the appeal being withdrawn.

The response by Selby District Council

3. The Council's response was also made in writing. No additional points were made orally at the Hearing.

Reasons

4. 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 PPG provides examples of circumstances which may lead to an award of costs against a local planning authority. Awards may be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The application for an award of costs in this case is made on both procedural and substantive grounds.
 5. The planning application was validated on 3 August 2015, with the 8-week determination date being 29 September 2015. The Council did not determine
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- the application within this time period nor did it request any further information or provide any explanation on planning grounds as to why a determination within that period could be not be made.
6. The applicant indicates that telephone enquiries to ascertain progress on the application proved unfruitful, although the Council disputes this and suggests that the applicant was made aware of the resource issues that were contributing to its inability to determine the application. However, I have no evidence that would suggest that in any such communication was any indication of the likely date of the determination of the application provided.
 7. An e-mail was sent to the Council on 1 February 2016 which resulted in a telephone and e-mail response on 26 February 2016. This outlined the likely reasons for the refusal of planning permission but provided no indication of a determination date. The Council suggested that there were two reasons for the refusal of the application. In summary, the first reason related to the unsustainable location of the appeal site outside of the development limits of Stutton. The second related to highway safety due to inadequate visibility splays.
 8. With regard to the second suggested reason for refusal, the Council had received a response from the highway authority dated 29 September 2015 which raised no objections to the proposed development subject to conditions. The appellant queried the Council's position on 1st March 2016 and the Council suggested that it would review its position regarding this reason for refusal. However, it was only subsequently confirmed in the Council's statement of case and re-confirmed at the Hearing that there were no highway objections to the proposed development. In the intervening period the appellant indicates that traffic counts and evidence was being compiled in order to respond to the highway safety concerns suggested by the Council.
 9. At the time the planning application was submitted the Council was unable to demonstrate a 5 year housing supply. In October 2015 the Council published a report that demonstrated that the District had a 5.8 year housing supply. The existence, or otherwise, of a 5 year housing supply was relevant to the determination of the application as Policy SP2 of the Selby District Core Strategy (2013), which was referred to in the Council's first suggested reason for refusal, relates to the supply of housing.
 10. Paragraph 49 of the National Planning Policy Framework 2012 (the Framework) advises that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5-year supply of housing sites. In such circumstances, applications should be considered in the context of a presumption in favour of sustainable development.
 11. The applicant raised a number of queries in relation to the methodology and data used to calculate the 5 year supply in an e-mail on 1 March 2016 and despite further prompts no substantive response was made to these queries by the Council.
 12. The Council indicate that it was not able to determine the application due to an abnormally high number of planning applications received at the time, a high level of staff turnover and difficulties in recruiting staff. Moreover, the Council suggest that the application was submitted at a time with the Council did not

have a 5 year supply of housing and therefore received an influx of speculative applications for residential development. Consequently, the Council was determining its backlog of applications in date order.

13. Whilst a lack of resources may have been a contributory factor in the Council not determining the planning application, no planning reasons were provided to the applicant, both during the initial 8 week period or thereafter, as to why the application could not be determined. No additional information was sought from during the Council's consideration of the application. Consequently, I agree with the appellant that the Council had been provided with all of the necessary information to enable a decision to be made on the application within the statutory time limit.
14. The application for costs suggests that had the Council supplied the information requested relating to the 5 year supply of housing, and were this to be found robust, then the appeal would have likely been withdrawn. The Council suggest that they did not provide the information requested by the applicant relating to the issue of 5 year supply of housing as they did not consider it to be material to the case.
15. Giving the relevance of paragraph 49 of the Framework and the fact that the applicant's queries were directly relevant to the calculation of the 5 year supply of housing, this issue was a material consideration and comprised the majority of the detailed discussions at the Hearing. It was clear that the Council were able to respond succinctly to each of the queries relating to 5 year supply and I found that the data and methodology used to calculate the supply to be robust. In my view the Council could have adequately dealt with this matter in correspondence prior to the Hearing thereby avoiding the need for discussions at the event.
16. I consider that the Council has not provided any substantive planning reasons as to why a decision could not be reached on the application within the relevant time period. In addition, the suggested reason for the refusal of planning permission relating to highway safety was subsequently withdrawn in the Council's statement without any prior communication with the appellant. The appellant's cost application suggests that unnecessary traffic counts and evidence relating to the Council's initial highway safety concerns was being compiled. As such, I agree that unnecessary expense was incurred in compiling such evidence.
17. The information relating to the Council's 5 year land supply was only provided at the Hearing although it was requested on several occasions by the appellant prior to the date of the Hearing. It was clear at the Hearing that the required information was readily available but other than an indication that the issue was not considered to be material, the Council did not offer any explanation as to why the appellant's queries were unanswered. Giving my findings that the queries raised by the applicant demonstrated that the Council's housing supply of 5.9 years is robust, I consider that the discussions at the Hearing on this matter could have been avoided.
18. The Council's failure to determine the application and paucity of communication with the appellant prior to the Hearing therefore constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal. Although I found that the suggested reason for the refusal of planning

permission was robust, this does not exonerate the Council's actions in not determining the application, not adequately responding to requests for information and not providing any substantive explanation as to why a determination could not been made despite no additional information being required.

19. The applicant has also indicated that are substantive grounds for not determining the planning application in a consistent manner. This specifically relates to an application for residential development on land to the east of Mill Lane Stutton (Ref 2015/0271/OUT) which is located outside of the development limits of the village. This development which was granted planning permission at the time when the Council could not demonstrate a 5 year supply of housing.
20. Whilst I do not have the full details of that application it is clear that it was determined in different circumstances to the appeal proposal with regard to the Council's position with 5 year housing supply. Notwithstanding the relative dates of the submission of that application and the appeal application, given my findings that Policy SP2 of the Core Strategy is relevant, I do not consider there any grounds to suggest that the appeal proposal should be determined in a consistent manner with that application. Consequently, I do not consider that this matter constitutes substantive grounds for the award of costs.
21. Whilst I have some sympathy with the Council's resource position, the PPG is quite clear on the type of behaviour that may give rise to a procedural award of costs against a local planning authority. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

22. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Selby District Council shall pay Mr K Tillett the costs of the appeal proceedings described in the heading of this decision.
23. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR