The Planning Inspectorate

Costs Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 23 November 2016

Costs application in relation to Appeal Ref: APP/X1545/W/16/3151358
Land at the corner of Fambridge Road and St Stephens Road, Cold Norton, Essex CM3 6NP

- 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 Miss Anne-Marie Pharoah for a full award of costs against Maldon 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 application for the siting of a mobile home as agricultural workers dwelling for a temporary period of 3 years.

Decision

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

Reasons

2. Paragraph 030 of Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. Paragraph 033 states that "all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded."

4. Paragraph 048 explains that if "it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period."

5. In this regard, other than questioning the substance of the information provided, I do not consider that the Council has provided a proper explanation of their reasons for not reaching a decision within the relevant time limit. Nevertheless, the written and oral evidence provided by the Council explains why permission would not have been granted had the application been

determined within the relevant period. On this basis it is clear that an appeal would not have been avoided.

6. Paragraph 049 of PPG states local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.

7. Whilst the appellant considers that the proposal complies with LP Policy CC15, including that the enterprise is economically viable, it is stated that this policy requires a financial test to be applied to applications for temporary agricultural worker's dwellings which goes beyond the requirement of paragraph 55 of the National Planning Policy Framework (the Framework) for demonstrating the essential need for a rural worker to live permanently at or near their place of work in the countryside. The appellant contends therefore that the Council are relying on a policy which is out-of-date and should only be afforded limited weight. In such circumstances it is highlighted that paragraph 14 of the Framework states that decision makers should approve development proposals unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

8. However, paragraph 211 explains that for the purpose of decision-taking, the policies in the local plan should not be considered out-of-date simply because they were adopted prior to the Framework. Although the Framework does not specifically set out a the requirement for a financial test, in the circumstances of this case I consider that such criteria, and the others set out within LP Policy CC15, form an appropriate basis for establishing whether there is an essential need for a rural worker to live permanently at the site, as required by paragraph 55 of the Framework. It therefore follows that, having regard to paragraph 215 of the Framework, I find that the Council was entitled to give the Policy substantial weight, as I have done, and not treat it as being out-of-date.

9. It is clear from my decision that I share a number of the Council's concerns about the evidence submitted in support of the application. However, the weight to be applied to such evidence is a matter of planning judgement, along with other material considerations, including the support for economic growth in rural areas as set out in paragraph 28 of the Framework. Therefore, whilst I have not agreed with the Council's decision, I do not consider that it made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. As the Council's view is that there is no essential need, it reasonably follows that this is not a planning ground capable of being dealt with by condition. Moreover, as the development is already in place, the Council has not prevented or delayed the same.

10. It is the appellant's position that the Council is not determining similar cases in a consistent manner and in this regard has made reference to planning permission OUT/MAL/14/01182 for the erection of a farm workers dwelling on land south of Hatch House Farm, Burnham Road, Hazeleigh Essex. However, I have no substantive evidence of the case referred to and as such I am unable to determine whether the Council has acted unreasonably in this regard.

11. The appellant also contends that the Council refused to enter into pre-application discussions, or to provide reasonably requested information. The Council however state that the appellant did not submit a pre-application

enquiry prior to the second application being made. In the absence of any definitive evidence on this matter I am not able to reasonably conclude whether either party has behaved unreasonably and thereby caused unnecessary expense in the appeal process.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Richard S Jones

Inspector