

Costs Decision

Hearing held on 13 September 2016, 2 November 2016 and 3 November 2016

Site visits made on 13 September 2016 and 3 November 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 14 December 2016

Costs application in relation to Appeal Ref: APP/H1033/W/16/3147202 Birch House, Spinnerbottom, High Peak, Derbyshire, SK22 1DH

- 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 High Peak Borough Council for a full award of costs against Mr & Mrs Bobby Lawton.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the demolition of existing buildings and replacement with 3 No detached dwellings.
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Decision

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

The submissions for High Peak Borough Council

2. The costs application was submitted in writing and presented orally at the Hearing. The application is made on the basis that the appellants acted unreasonably in seeking to introduce a new area of dispute concerning housing land supply and in pursuing the appeal which having regard to previous decisions had no reasonable prospect of success.

The response by the appellants

3. The appellants' response was made orally at the Hearing.
 4. In response to the first part of the application the appellants contend that it is factually incorrect to suggest that they sought to introduce a new area of dispute concerning housing land supply. The appellants' appeal statement dated March 2016 referred to the Council's 5 Year Land Supply Assessment (Dec 2015). It also referred to the number of dwellings that had been completed between April 2011 and 31 December 2015 and suggested that if the Council was to meet its annual housing requirement there would need to be a significant rise in completion rates. In their appeal statement the appellants indicated that the situation would continue to be monitored and that they reserved the right to make further comment on the issue at the Hearing.
 5. At the beginning of September 2016, prior to the Hearing, the appellants contacted the Council to request they be provided with the most up-to-date information regarding housing completions and were referred to the information which was available on the Council's website. The information provided details of the position as at 30 March 2016 and it was this that was
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submitted at the start of the Hearing on 13 September 2016. In submitting the information at the start of the Hearing the appellants indicated that they were not seeking to challenge the Council's five year housing land supply but merely to submit the most up-to-date information available to the Hearing to support the position already set out in their appeal statement. In response to the submitted information the Council stated that its most recent information indicated that there had been a material change in the levels of housing completions since March 2016 and following much discussion and a request from the Council for an adjournment it was agreed to adjourn the Hearing to allow the Council to provide the most up-to-date position in relation to housing completions.

6. Following the adjournment of the Hearing the Council argued that the procedure should be converted to an Inquiry or further postponed. However, this request was refused and it was ruled that the appeal would proceed as planned by way of a Hearing. It is therefore factually wrong to suggest that the appellants sought to introduce a new area of dispute or that the adjournment was as a result of something raised by the appellants but rather that it was for the benefit of the Council and to allow it to provide the most up-to-date information regarding completion rates. The application for costs on this basis has no merit.
7. For the application to succeed in relation to the second part it is necessary to find that the appellants' arguments are so bad that they are unreasonable. The Council did not seek to use its powers to refuse to determine the application under the provisions of Section 70A of the Town and Country Planning Act 1990. The 1991 appeal decision pre dates the publication of the National Planning Policy Framework. Therefore, it was considered in the light of national planning policy as set out in PPG2 which made no provision for the redevelopment of previously developed land to constitute development that would not be inappropriate within the Green Belt. The current appeal scheme is different to that considered in the 2013 appeal in that it is significantly smaller, relating to 3 dwellings rather than 5. Furthermore, more evidence has been provided relating to landscaping and visibility. Therefore, in pursuing the appeal the appellants have not behaved unreasonably.

Reasons

8. 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.
9. In relation to the first part of the application for an award of costs the appellants acknowledged that the Council indicated that it could demonstrate a 6.2 year supply of housing land in their appeal statement. They also commented upon the most recent information regarding completions and suggested that if the Council was to meet its annual housing requirement there would need to be a significant rise in completion rates. In their appeal statement the appellants reserved the right to comment further on this issue at the Hearing. Accordingly, the Council was aware of the appellants' position on this matter at the start of the appeal process.
10. It is unfortunate that there was no further discussion between the parties on the issue of housing completions in the intervening period between the

submission of the appellants' appeal statement and the Hearing. However, on submitting the information obtained from the Council's website at the start of the Hearing the appellants made clear that they were not seeking to challenge the Council's recently adopted Local Plan or its five year housing land supply but rather to ensure that their appeal statement and their suggestion that the appeal proposal would make a useful contribution as a windfall towards meeting the housing requirement having regard to the current position in relation to completions was supported by the most up-to-date information.

11. During the discussion that followed the Council indicated that there had been a recent improvement in completion rates and that the position now was somewhat different to that indicated in the information submitted by the appellants. The adjournment was provided at the request of the Council in order to allow it to produce the most up-to date information to ensure my decision was informed by the current position. Furthermore, in correspondence during the intervening period between the adjournment and the resumption of the Hearing the appellants restated that they were not seeking to challenge either the Council's recently adopted Local Plan or its Housing Land Supply position. Accordingly, in the light of all of the above I am satisfied that the appellants did not seek to introduce a new area of dispute concerning housing land supply and therefore that they did not behave unreasonably in this respect.
12. In relation to the second part of the application for an award of costs, as indicated in my decision on the appeal proposal there has been a change in the national planning policy context since the 1991 appeal, that appeal having been considered in the light of the advice set out in PPG2. Accordingly, the circumstances were not the same as in this case. Furthermore, the planning application for the appeal proposal in this case was submitted in full for three detached dwellings whereas the 2013 appeal decision related to an outline proposal for residential development which was accompanied by an indicative layout plan which showed five sizeable detached dwellings and garages set on spacious plots. The planning application subject to the appeal proposal was also accompanied by evidence on visibility and landscaping.
13. Accordingly, notwithstanding the 2013 appeal decision I am satisfied that it was not unreasonable for the appellants to consider that the current proposal was sufficiently different to the earlier one as to make its chances for success at appeal a reasonable possibility. Indeed, although I found against the appellants overall and dismissed the appeal, I did find that that the proposal would not be inappropriate development within the Green Belt and would not materially harm the character and appearance of the Green Belt and the surrounding area. Therefore, I am satisfied that the appellants did not act unreasonably in this respect also.
14. Having regard to all of the above therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

Beverley Doward

INSPECTOR