
Costs Decision

Hearing held on 21 March 2017

Site visit made on 21 March 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 13 April 2017

Costs application in relation to Appeal Ref: APP/X1118/W/16/3149117 Higher Dodyard, Chulmleigh, Devon

- 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 John Crocombe for a full award of costs against North Devon 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 planning permission for an outline application for an agricultural worker's permanent supervisory dwelling.
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Decision

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

The submissions for Mr John Crocombe

2. The application for costs was made in writing prior to the hearing, in accordance with paragraph 035 of the Planning Practice Guidance (PPG) section 'Appeals'. Further verbal submissions were made at the hearing. An award of costs is predominantly sought on substantive grounds.
3. The Council did not explain why it failed to determine the application after the applicant had made it clear that he would not enter into a Planning Obligation. As the Council agreed that there is an essential agricultural need for the proposed dwelling in the Statement of Common Ground, its failure to determine the application has delayed development which should clearly have been permitted. Moreover, the Council's assumption that the dwelling could be sold off in the future is unjustified and not supported by any evidence or analysis, given the genuine need for another dwelling on the holding and its previous history, which shows a continuing long-term pattern of sustained growth.
4. The Council has not had regard to legislation or national policy in seeking an Obligation in relation to a matter which could have been dealt with by a condition. The Council has failed to take account of previous appeal decisions¹ where an Obligation was held to not be necessary. It was also said on behalf of the applicant, that had the Council negotiated an Obligation along the lines it outlined at the hearing, an appeal might have been avoided altogether. The above has all caused the applicant to unnecessarily incur the extra expenditure

¹ References APP/Y1138/A/13/2200238 & APP/W1145/A/09/2099322.

associated with the appeal, having regard to the professional fees of his representatives.

The response by North Devon District Council

5. The Council responded verbally and in writing at the hearing. Non-determination of the application has not caused the applicant any additional expense. It was clear that the Council would not permit the proposed dwelling without an Obligation. A refusal would therefore have been inevitable and any subsequent appeal would still have had to deal with the same matters.
6. Whether an Obligation is required is a matter of opinion, which differs between the main parties. Consequently, this is not a situation where the development should clearly have been permitted. The Council has set out its case in a clear and coherent manner as to why an Obligation is required and its position is therefore not unfounded. The Council has made reference to the number of cases where agricultural dwellings are sold off and an occupancy condition subsequently removed. Planning permission runs with the land and the applicant's current intentions could change in future. The applicant has not addressed the reasons for the Council requiring an Obligation in any substantive fashion. He has not justified why he is unwilling to enter an Obligation, which would have limited impact if there were no intention to alienate the proposed dwelling from the holding. The applicant was not prepared to negotiate over the terms of an Obligation with the Council and placed reliance on superseded national advice.
7. It is appropriate and reasonable to use an Obligation in such cases and it is supported by law and precedent. The basis of the application for costs is assertion, it is unsupported by facts and indicates inflexibility on the part of the applicant and a failure to address the Council's legitimate concerns.

Reasons

8. In 'Appeals', the PPG advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is at paragraph 031.
9. At paragraph 049, the PPG provides a list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour relating to the substance of a case. These include preventing or delaying development which should clearly have been permitted, failing to produce evidence to substantiate the reasons for refusal at appeal, making vague, generalised or inaccurate assertions about the impact of a proposal which are unsupported by any objective analysis, not following well established case law and requiring an applicant to enter into an Obligation which does not accord with the law or national policy. The list is not exhaustive.
10. Although the Council agreed that there is an essential need for the proposed dwelling, it does not automatically follow that the application should clearly have been permitted without an Obligation. The Council made reference to the relevant part of the Development Plan as well as an adopted Supplementary Planning Document as its basis for seeking an Obligation. The Council produced substantial and relevant evidence in the written statement, which

was expanded upon at the hearing, to explain why it believed that an Obligation was necessary in this particular case, having regard to the planning harm that would otherwise occur.

11. In particular, the Council presented clear and coherent, specific evidence concerning the possible planning consequences of having no Obligation. This evidence provided support for the Council's view that the current need for the proposed dwelling might not be sustained if circumstances at the holding changed in future and there was no Obligation in place. The evidence also supported the Council's position that an agricultural occupancy condition would not achieve the same objective as an Obligation. The evidence was capable of withstanding an objective analysis. Therefore, the Council's evidence was not vague, generalised or unsupported.
12. The Council also set out in detail why it considered that the appeal decisions referred to by the appellant were not comparable with the appeal scheme. Neither decision created a general principle as each planning case is required to be dealt with on its individual merits.
13. Overall therefore, the evidence presented by the Council underpinned its view of why it considered that an Obligation was necessary and that an occupancy condition would not achieve the same objective. Whilst it is my view that in this case, an Obligation would not accord with law or national policy, this is ultimately a matter of judgement. The Council's opinion was an entirely reasonable one to reach, based on all the available evidence. Consequently, none of the examples of unreasonable behaviour set out in PPG paragraph 049 are relevant in relation to this appeal.
14. The Council also gave substantive reasons for not reaching a decision within the relevant time limit and it clearly explained why permission would not have been granted, had the application been determined within the relevant period. The Council's evidence showed that it had taken the applicant's expressed concerns into account by adopting a flexible approach to the format and wording of an Obligation, many months prior to the appeal being made. However, the applicant chose not to pursue negotiations with the Council. Therefore, given the differences between the main parties even if the application had been refused an appeal could not have been avoided. Consequently, the Council's behaviour relating to the handling of the planning application could not be regarded as unreasonable, having regard to PPG paragraph 048.

Conclusion

15. Although I did not share the Council's conclusions on whether an Obligation was necessary in this instance, it had a sound evidential basis upon which it was able to substantiate its case at appeal. The Council has also given substantive reasons as to why an appeal could not have been avoided.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR