The Planning Inspectorate

Costs Decision

Site visit made on 4 April 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 12 May 2017

Costs application in relation to Appeal Ref: APP/N3020/W/17/3166453 Altham Lodge, Main Street, Papplewick NG15 8FE

- 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 and Mrs Kevin Gilbert for a full award of costs against Gedling Borough Council.
- The appeal was against the refusal of planning permission for Outline Planning Application with All Matters Reserved for the Erection of a Dwelling.

Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour[1].

Procedural Matters

4. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, including complying with the requirements and deadlines of the appeal process[2]. Examples of procedural behaviour which may lead to an award of costs include:
   - *lack of co-operation with the other party or parties; and*
   - *delay in providing information or other failure to adhere to deadlines.*

5. I understand that the Council required the appellants to submit a request under the Environmental Information Regulations (EIR) 2004 to obtain copies of representations on the application before they submitted the appeal, and that there was a delay of about 4 weeks whilst this information was provided and a

[1] Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306
[2] Paragraph: 047 Reference ID: 16-047-20140306

further delay whilst the information was provided in un-redacted form. I also note the appellants' claim that they experienced delays in obtaining copies of the Council's decision notice and officer report.

6. However, although the delays may have been frustrating it is not clear from the submitted evidence what information was missing from the redacted copies of the representations which were initially provided or why the appellants needed un-redacted copies to progress the appeal. The Council has also indicated that the decision notice was posted directly to the appellants' agent 'once issued' and that the officer report was made available 'immediately' once it realised that the online version was not available. The delays also did not prevent the appellants from submitting an appeal well within the 6 month deadline for doing so.

7. Whilst the appellants have claimed that the Council refused to enter into discussions with regard to the application, few details have been provided of when or how they submitted any requests in this regard or of the terms of any response. As the Council's objections to the proposal related to matters of principle it is likely that such discussions would have simply added further costs for the appellants without providing substantive benefit.

8. Having regard to the points set out above, it has not been established that the Council acted unreasonably in relation to procedural matters before the appeal was submitted.

9. I note that during the appeal process the Council: submitted a response to the appellants' final comments; failed to submit a copy of its appeal questionnaire and supporting documents to the appellant when required to do so; and submitted its list of conditions one day behind the relevant deadline for doing so. These actions may have been at least in part due to lack of awareness of relevant procedures and were quickly rectified once they were drawn to the Council's attention. Nevertheless, they include breaches of the relevant regulations and procedures[3][4] which the appellants could not be sure would be addressed unless they brought them to the attention of the Inspectorate. Given the emphasis that the PPG places on complying with such requirements I conclude that they collectively amounted to unreasonable behaviour.

10. Taking account of the minor nature of the Council's delay in submitting the conditions and as the questionnaire was made available to the appellants several weeks before their deadline for submitting final comments, I am not convinced that these actions resulted in the appellants incurring unnecessary expense due to the need to reschedule work. However, they did incur such expense in preparing necessary correspondence to bring the matters set out in paragraph 9 above to the attention of the Council and the Inspectorate.

Substantive matters

11. Examples of substantive unreasonable behaviour referred to in the PPG include:

[3] 'Procedural Guide Planning appeals – England', Planning Inspectorate, August 2016, appendix D1
[4] The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 as amended by the Town and Country Planning (Appeals) (Written Representations Procedure and Advertisements) (England) (Amendment) Regulations 2013

- *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;*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;*
- *acting contrary to, or not following, well-established case law; and*
- *not determining similar cases in a consistent manner.*

12. There is no evidence that the Council, in assessing the application, considered the implications of relevant case law[5] relating to whether the appeal site comprises a previously developed site. However, whilst bullet point 6 of paragraph 89 of the National Planning Policy Framework identifies that re-development of such a site may be 'not inappropriate' in the Green Belt this is subject to the proviso that the proposal should *'…not have a greater impact on the openness of the Green Belt…'* than the existing development. The Council reasonably concluded that the proposed erection of a dwelling in place of the current tennis court and fenced enclosure within the site would not satisfy this proviso.

13. The Council also did not explicitly consider the Gravesham case referred to by the appellants[6] when considering whether the proposal constitutes limited infilling in a village. However, the Council reasonably concluded, having regard to the provisions of the development plan and other considerations set out in my appeal decision, that the proposal would not constitute infilling.

14. Whilst the Council officer report did not address the implications of the Hunston Properties Ltd case or appeal decision APP/G1630/V/14/2229497 it did specifically address housing land supply. The Council's conclusion that the contribution that the appeal proposal would make to this supply would not clearly outweigh the harm that it would cause to the Green Belt was, for reasons set out in my appeal decision, reasonable.

15. I have found, in relation to the Council's second reason for refusal, that the proposal would not cause material harm to the character or appearance of the PCA. However, this is a matter of judgement based upon my assessment of the effect of the proposal on the settlement pattern within Papplewick, and whether the loss of trees and other vegetation required to form the new access arrangements could be adequately mitigated. It is not unreasonable for the Council to have come to a different view.

16. Whilst the Council previously granted permission for a garage within the appeal site, that permission was for a building which was materially smaller than any proposed dwelling on the site would be likely to be and which was subject to different policy considerations. This factor does not result in either of the Council's first two reasons for refusal being unreasonable.

17. I have found, in relation to the Council's third reason for refusal, that the proposal would not cause material harm to the living conditions of occupiers of Cornerstone House in relation to noise or disturbance. However, this too is a

[5] Dartford Borough Council v Secretary of State for Communities and Local Government and ORS, [2017] EWCA Civ 141
[6] Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council C1/2014/1144

matter of judgement. The proposal would also not necessarily replicate the effects of the garage which was previously approved as the access alongside Cornerstone House would, according to the submitted documentation, be shared by the proposed dwelling plus the egress to Altham House. I conclude that this reason for refusal was not unreasonable.

Conclusions

18. I have found that none of the Council's reasons for refusing permission or any other aspect of its behaviour before the appeal was submitted were unreasonable. Whilst I have found aspects of its behaviour during the appeal process itself to be unreasonable, as described in paragraph 9 above, the unnecessary or wasted expense incurred by the appellants as a result of this behaviour has been limited to the cost of drawing the relevant matters to the attention of the Council and the Inspectorate.

Costs Order

19. 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 Gedling Borough Council shall pay to Mr and Mrs Kevin Gilbert, the costs of the appeal proceedings described in the heading of this decision limited to those costs which have been incurred in drawing the procedural matters in paragraph 9 above to the attention of the Council and the Inspectorate; such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. The applicant is now invited to submit to Gedling Borough 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.

Jonathan Clarke

INSPECTOR