
Costs Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 15 June 2017

Costs application in relation to Appeal Ref: APP/D3315/W/17/3168514 Applebrook House, Lydeard Down Hill, Lydeard St Lawrence, Taunton TA4 3SB

- 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 Maurice Hartnell for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal of planning permission for change of use from orchard in agricultural use to domestic use for adjoining property.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section 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 caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
 3. The application for an award of costs is made on both substantive and procedural grounds. In summary, the applicant claims that the Council has not provided any evidence to substantiate its reason for refusal and has only referred to the officer report. Its reason for refusal is generalised and is not supported by a full and clear assessment. The Council does not explain the significance of the appeal site. The Council failed to consider whether conditions would overcome its objections. The Council sought to expand on its case in its costs response and referred to an additional policy.
 4. Procedurally, the applicant says that the Council did not engage with them during the application process and it did not look to find solutions to enable permission to be granted, contrary to paragraphs 186 & 187 of the National Planning Policy Framework (the Framework). The applicant had agreed to an extension of time and the case officer indicated that permission might be forthcoming but the application was refused without warning.
 5. In response, the Council says that reliance on the officer's report to support its case at appeal is good practice. The report explains why the proposal would have an adverse visual impact. Conditions would not overcome this harm. Procedurally, the proposal was unacceptable in principle and additional
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engagement with the applicant would not have addressed this. No pre-application enquiry was made by which the Council's position would have been made clear in advance of an application. The appeal site is clearly outside the defined settlement limits. Policy SB1 of the recently adopted Taunton Deane Site Allocations and Development Management Plan (DMP) re-affirms the Council's approach to development in the countryside.

6. 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 concerning the substance of the case. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other considerations; failing to produce evidence to substantiate their reasons for refusal at appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis, and; refusing permission where suitable conditions would enable the development to go ahead. The list is not exhaustive.
7. Consideration of matters such as character and appearance can often involve judgements being made and parties can legitimately hold different views. Provided those views are underpinned at appeal by a robust body of evidence, a parties' case would be substantiated. The Council's officer report clearly sets out the reasons why it considered that there would be harm caused to the character and appearance of the Lydeard St Lawrence Conservation Area (CA), in a manner proportionate to the scale of the proposal. Its evidence concerns specific impacts of the proposal and is not vague, generalised or inaccurate. The appeal site is in the CA. A more detailed assessment of its contribution to the CA would have been disproportionate, given the scale of the proposal. It is also apparent from the officer report that conditions would not have addressed the majority of the harm identified by the Council. Therefore, there was no good reason for the Council to go into a detailed consideration of conditions. In terms of the appeal, the Council did not suggest a condition to remove 'permitted development' rights for residential outbuildings for a similar reason.
8. The Council's response to the costs application largely responds to the points made by the applicant. It is always likely that there will be some overlap between the merits of a case and responding to a costs application in part made on substantive grounds. However, I do not read the Council's response as making additional submissions on their case at appeal and have not treated it as such. In particular, I do not interpret the reference to Policy SB1 as other than an illustration of a materially unchanged policy background following adoption of the DMP. The applicant was already aware of Policy SB1 as they had referred to it in their own written statement.
9. The use of the Council's officer report to present its case in written appeals is encouraged¹. Consequently, I do not agree with the applicant's criticism of the Council for mainly relying on the report, in particular as for the reasons explained above it is sufficiently detailed to address the matters at issue.
10. For the above reasons, I consider that the Council's case is supported by evidence and it has been substantiated at appeal. Conditions could not overcome the harm identified in the reason for refusal. Consequently, the

¹ Procedural Guide: Planning Appeals-England Planning Inspectorate August 2016.

Council has not prevented or delayed development which clearly should have been permitted.

11. The procedural matters raised by the applicant largely concern the processing of the application, rather than the appeal itself. Therefore, there is no firm evidence before me that the Council acted and behaved in any of the ways listed at paragraph 047 of the PPG or otherwise in a manner which could be regarded as unreasonable in relation to appeal procedures.
12. At paragraph 048, the PPG details when the Council's handling of the planning application might lead to an award of costs. However, this is mainly concerned with cases where the Council fail to determine applications, as opposed to when planning permission has been refused. Otherwise, paragraph 033 advises that costs cannot be claimed for the period during the determination of the application, although behaviours and actions during that time can be taken into account.
13. Whilst the case officer might have verbally indicated that the application would be supported, there is no firm evidence in this respect. Moreover, officer advice is not binding on the Council and is not in itself evidence of unreasonable behaviour. I can appreciate the applicant's sense of frustration at the manner in which the application appears to have been determined after agreeing an extension of time. Even so, the Council's behaviour and actions in relation to the application, although perhaps falling short of the proactive approach encouraged by the Framework, were also tempered by their fundamental objections to the proposal which were incapable of resolution. Consequently, these matters do not fall within the scope of what could be regarded as procedurally unreasonable behaviour under the PPG.

Conclusion

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

Stephen Hawkins

INSPECTOR