



Costs Decision

Site visit made on 3 July 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 27th July 2017

Costs application in relation to Appeal Ref: APP/M0933/W/17/3173135 Frosthwaite Farm, Sizergh, Kendal LA8 8DY

- 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 N Mitchell-Hunter for a full award of costs against South Lakeland District Council.
 - The appeal was against the refusal of planning permission for residential development (2 dwellings).
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for an award of costs is made on both procedural and substantive grounds. Procedurally, the applicant has argued that the Council has acted unreasonably by not submitting an appeal statement to fully explain the reasons for refusal. Whilst no appeal statement was submitted by the authority the reasons for refusal are based on a detailed delegated report which sets out the Council's reasoning as to why they considered the application should be refused. Both this, and the reasons for refusal, set out the development plan policies to which they consider the proposal would be contrary. Given the reasoning set out in the delegated report, I am satisfied that the lack of appeal statement does not mean the Council have acted unreasonably.
4. In terms of the substantive grounds for the award of costs, the applicant claims that the Council has acted unreasonably by failing to produce evidence to substantiate the reasons for refusal. It is also argued that in not giving an opportunity to discuss the concerns of the Officers before the application was determined, and by not reviewing their case promptly following the lodging of the appeal, the Council have not worked with the appellant in a positive and proactive way. The PPG indicates that where a more helpful approach would probably have resulted in the appeal being avoided altogether, this may lead to an award of costs against a planning authority.

5. The reasons for refusal state that the Council consider the site to be in the open countryside, and that the proposal would not accord with criteria for development in such a location. The delegated report provides substantive reasoning for what they consider a hamlet is, and why they therefore consider that Sizergh is not a hamlet. It also states why they disagree with the appellant's view on this matter. In addition, the report clearly sets out why they consider a different approach is merited with regard to this application than had been taken in other applications or appeals, both in the vicinity, and the wider area. Whilst the appellant may not agree with this reasoning, or with the Council's conclusion in this respect, this does not mean that the Council has acted unreasonably. Similarly, although the appellant may disagree with the Council's conclusion on whether it is a "corner plot", this does not mean the Council behaved unreasonably in coming to this conclusion as the site stands on a road junction.
6. Furthermore, the report also assesses why, if Sizergh was to be considered to be a hamlet, the proposal would not comply with criteria for development within a hamlet set out in the relevant development plan policies. I note the appellant's concerns about the timing, nature and value of the discussions that took place with the Council before the application was determined. Irrespective of this, given the fundamental nature of the Council's objections to the proposal, I do not consider that they have acted unreasonably in not entering into detailed negotiations with the applicant, or in changing their views when reviewing the case at appeal, as it is clear that in their view even if the settlement was a hamlet, it would not have been sufficient to make it acceptable.
7. I note the appellant's particular concern with the phrase "visual rural historic landscape" used in the reason for refusal. In particular it is stated that this is not a term used in the Cumbria Landscape Character Guidance. Be that as it may, clarity is provided in the delegated report which sets out why the Council consider the proposal would be detrimental to the landscape / visual character of the area. Thus, while the wording used in the reason for refusal could perhaps have been better, I am satisfied that adequate explanation is given in the delegated report, and so this does not represent unreasonable behaviour.
8. The appellant has also raised concerns regarding the informative on the decision notice. Some of these concerns regarding discussions with the appellant I have addressed above. I understand that the decision on the planning application was made several weeks after the date the Council had initially indicated it could be expected. Although, I appreciate the applicant's frustration at this, they could have appealed earlier against a failure to determine the application, thereby avoiding any unnecessary expense from the delayed decision. Whilst the appellant has suggested that it would not be possible to amend and re-submit the proposal that is disputed by the Council, and this is not something I can deal with in the absence of more detailed information.
9. The appellant also claims that the Council determined to refuse the application prior to any substantive assessment had been carried out. However, from the evidence before me there is nothing to suggest that the Council failed to give proper consideration to the application, and the delegated report provides a detailed assessment of the proposal against the development plan and other material considerations. The fact that the officer's initial assessment of the

proposal subsequently led to a similar decision to refuse the application, does not indicate an unreasonable approach.

10. In conclusion, I am satisfied that the Council has met its obligation to give proper consideration to the planning application, and there is nothing to persuade me that a different approach would probably have resulted in the appeal being avoided. Consequently, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

Alison Partington

INSPECTOR