The Planning Inspectorate

Costs Decision

Hearing Held on 18 July 2017

Site visit made on 18 July 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 24 August 2017

Costs application in relation to Appeal Ref: APP/X1355/W/17/3173189
Dunleyford Farm, Humberhill Lane, Lanchester DH7 0RT

- 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 T White, T A & N White Farming for a full award of costs against Durham County Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of a two storey detached agricultural workers dwelling with adjoining double car port and ancillary hard and soft landscaping features.

Decision

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

The submissions

2. The applicant's case was made in writing, and the Council have responded in writing, prior to the Hearing. No additional points were made orally by either party at the Hearing.

Reasons

3. Irrespective of the outcome of the appeal, costs may only 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.

4. The applicant contends, in the context of previous policy guidance, that the Council accepted that a 'functional' test had been met in assessing the essential need for a rural worker's dwelling in a previous appeal but have changed their position in relation to the appeal before me. In particular he considers that the Council conflated 'functional' and 'financial' tests in assessing the application. Furthermore he considers that the Council were unreasonable in not reverting the applicant's agent's response to a series of questions to the Council's agricultural adviser nor seek to meet to discuss or clarify any matters.

5. The Planning Policy Guidance[1] (PPG) states that local planning authorities are at risk of costs being awarded against them if they behave unreasonably with respect to the substance of the matter under appeal. Such circumstances could include persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.

[1] Paragraphs: 046 and 049, Reference ID: 16-046-20140306 and 16-049-20140306.

6. The 'functional' and 'financial' tests referred to were contained in Annex A of the former PPS 7[2] which has now been replaced by the National Planning Policy Framework (the Framework). In my decision I accepted that it is reasonable to consider both what the requirement for a permanent dwelling might be as well as whether such a requirement relates to an enterprise which is viable. Given that the Framework is a material consideration and that this does not differentiate between, or indeed specify, the tests or considerations necessary to demonstrate such an essential need, I do not consider that the Council acted unreasonably in considering both these aspects together which are in any event interdependent.

7. In the previous appeal decision, the Inspector reported that the Council accepted that there was a 'functional' need for a worker to satisfy livestock welfare requirements. In their Statement in respect of the appeal before me the Council advise they are "…satisfied that there are livestock on the site that need care" but go on to state that a 'functional' need has not been established. In their Delegated Report the Council acknowledge the position at the previous appeal and state that "…there will shortly be justification for an on-site presence related to for example bottle feeding and the keeping of young animals indoors."

8. Whilst there could be a degree of uncertainty about the Council's position in this regard, it is clear from their Delegated Report, Appeal Statement and refusal reason that their main concern turned on the viability and sustainability of the livestock activity, rather than a fundamental questioning whether that livestock activity would give rise to a requirement for a worker to be available at most times. The Council did not act unreasonably in this respect.

9. Turning to the matter of correspondence during the consideration of the application, and bearing in mind the PPG's guidance on the circumstances where a Council's behaviour may give rise to a substantive costs award, there would appear to be no necessity for the Council to have reverted to their agricultural adviser in response to the applicant's agent's answers to the Council's questions. Similarly, in light of the correspondence, there would not be any compulsion on the Council to meet to discuss the correspondence if it felt it has sufficient information to determine the application. Given the differences between the parties' on the matter, there is no evidence to suggest that had such a meeting occurred or the Council's adviser responded, that either the appeal would have been avoided or that the issues being considered would have been narrowed.

10. Furthermore, I note that the Council suggested that the applicant take an alternative route of seeking a further temporary permission for the mobile home on the site to enable the business to become established. In light of this I consider that the Council had information on which they could take a balanced view and were not being unhelpful. They did not act unreasonably in this respect.

11. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

Geoff Underwood

INSPECTOR

[2] Planning Policy Statement 7: Sustainable Development in Rural Areas, 2004.