The Planning Inspectorate

Costs Decision

Site visit made on 21 August 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 11 September 2017

Costs application in relation to Appeal Ref: APP/N3020/D/17/3175435
Rose Cottage, Goosedale Lane, Bestwood NG6 8UJ

- 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 M Leivers for a full award of costs against Gedling Borough Council.
- The appeal was against the refusal of planning permission for extension to rear of garage for workshop.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as 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. Other substantive matters include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The application for costs relates to each of these matters listed as examples.

4. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. The reason for refusal clearly identifies what the Council considers to be harmful and refers to conflict with Saved Policies ENV1 and ENV28 of the Gedling Borough Replacement Local Plan (RLP), Policy 10 of the Greater Nottingham Aligned Core Strategies - Part 1 Local Plan (LP-Part 1) and the National Planning Policy Framework (the Framework). In seeking to substantiate the reason for refusal, as the appeal is a HAS case where a statement of case is not submitted, the Council has provided its officer report and a supplementary costs response. The evidence in those documents provide detailed submissions relating to the main issue of whether the development the proposal would be inappropriate development in the Green Belt for the purposes of the Framework and the development plan.

5. It will be seen from my appeal decision that I concluded that the development would fall within the listed exceptions in paragraph 89 of the Framework in so

far as it would not be a disproportionate addition over and above the size of the original building. Consequently, I found that the proposal is not inappropriate development and in the absence of any other harm in the context of Policy ENV1 of the RLP and Policy 10 of the LP-Part 1, I allowed the appeal and granted planning permission for the development.

6. With regard to the above, the applicant's evidence was influential, including a planning statement as referred to within the appeal submission. The planning statement was provided by the applicant as part of the planning application and had been received by the Council prior to its decision. The planning statement offers an accurate explanation of the extent to which Policy ENV28 of the RLP is no longer consistent with the Framework, the interpretation of 'original building' in the context of the proposal before me and reasons as to why the extension should not be considered a disproportionate addition relative to the garage/workshop as originally built. The planning statement also appropriately sets out with reference to case law, that compliance with the provisions of bullet point 3 of paragraph 89 of the Framework does not require further consideration of impact on the openness of the Green Belt.

7. The Council have accepted that the planning officer in making his recommendation relative to the planning application did not take into account the information within the planning statement provided by the applicant. I consider that such an approach to decision making undertaken on behalf of the Council constitutes unreasonable behaviour by virtue of not considering evidence provided as part of a planning application relating to relevant material considerations.

8. The failure to take account of the applicant's evidence contributed to the Council adopting a flawed approach when assessing the proposal relative to the dwelling and in the context of the site's planning history rather than solely the garage/workshop as originally built. Such an approach also arose from an error in not recognising the inconsistency of Policy ENV28 of the RLP relative to the Framework, which resulted in inaccurate assertions relating to its impact based on conflict with that policy and its supporting text. The unreasonable behaviour in that respect was exacerbated by a failure to take account of the difference of approach between Policy ENV28 of the RLP relative to Emerging Policy LPD13 of the Gedling Borough Local Plan - Part 2 Publication Draft (LP-Part 2) as referenced in a consultation response from the Council's Planning Policy section, together with relevant case law relating to paragraph 89 of the Framework.

9. The Council in seeking to substantiate its reason for refusal as part of its response to the costs application has also adopted an incorrect interpretation of 'original building' relative to the definition in Annex 2 of the Framework. The Council evidence includes assertions in terms of conflict with Emerging Policy LPD13 of LP-Part 2 based upon a flawed approach of calculating a floorspace increase relative to a building that no longer exists and storage containers that have been previously removed from the site. The garage / workshop as originally built, although a replacement of a previous building, is the 'original building' for the purposes of assessment of any extension when reasonably interpreting the Framework and its Annex. The Council have, therefore, maintained inaccurate assertions about the proposal's impact throughout the appeal process.

10. Having regard to the above, I found that the proposal accords with the 50% threshold for floorspace increase within Emerging Policy LPD13 and would not be viewed as a disproportionate addition when taking account of its siting, character and appearance. The Council has, therefore, also behaved unreasonably when making inaccurate assertions about the proposal's impact relative to local and national policy when assessing the proposal as part of its response to the costs application.

11. Turning to the matter of unnecessary or wasted expense, I consider that the Council's unreasonable behaviour and inaccurate assertions regarding the proposal's impact based on a flawed approach and interpretation of policies relative to the Framework, delayed the grant of planning permission for development which should clearly have been permitted having regard to the development plan, national policy and any other material considerations. In such circumstances, the applicant has suffered unnecessary wasted expense in lodging the appeal and pursuing it to its end to reach an outcome in his favour, which included additional preparation of appeal evidence.

Conclusion

12. For the reasons given above, I conclude that unreasonable behaviour of the Council resulting in the applicant suffering unnecessary and wasted expense in the appeal process, as described in PPG, has been demonstrated and a full award of costs is justified.

Costs Order

13. 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 M Leivers, the costs of the appeal proceedings described in the heading of this decision; such costs are to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Gedling Borough Council, details of those costs with a view to reaching agreement as to the amount.

Gareth Wildgoose

INSPECTOR