

---

## Costs Decision

Site visit made on 12 December 2017

**by Jonathan Tudor BA (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 January 2018**

---

### **Costs application in relation to Appeal Ref: APP/P1615/W/17/3180350 Hillyfields Nurseries, Tewkesbury Road, Newent GL18 1LG**

- 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 Galer for a full award of costs against Forest of Dean District Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of up to 3 dwellings including demolition of existing greenhouses.
- 

### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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.<sup>1</sup>
3. The application submits that the Council did not explain why a decision was not reached within the relevant time limit. It also says that the Council has unreasonably defended the appeal; that the posited reasons for refusal were insubstantial; that it persisted in applying a policy which had been found to be inapplicable by an Inspector in another appeal; and that it did not determine similar cases in a consistent manner. I will consider those aspects in turn.
4. With regard to conduct during the course of the planning application, it is apparent that there were ongoing discussions between the parties during that process. That is supported by extensive correspondence submitted by the applicant with the main appeal and the submissions of the Council.
5. On 22 May 2017 there was discussion about an extension until 12 July 2017 to enable submission to the relevant committee, which the applicant was agreeable to, albeit in the context of a recommendation for approval. At that point, there were outstanding issues regarding landscaping and biodiversity which were not resolved until 29 June 2017.
6. On that day, it appears that the applicant also learned of the objection from the Council's Forward Planning Team because the site was outside the settlement boundary. The applicant was aware that it would be likely to result in a

---

<sup>1</sup> Paragraph: 030 Reference ID: 16-030-20140306

- recommendation for refusal and requested an extension until 7 July 2017, to enable time to respond, before a decision was made. Further discussion took place on 6 July 2017, when it was understood by the applicant that the comments which they had submitted had not altered the recommendation.
7. Therefore, communication did take place and it seems to me that the applicant was aware of relevant timescales and issues and the basis of the likely refusal. Whilst I understand the applicant's disappointment at the change in the Council Officer's position, it is not unusual for views to change during the course of the application process dependent on issues raised, information provided and the responses of consultees.
  8. There appears to have been some confusion between the parties regarding whether the proposal would be referred to a committee or vetting panel, since clarified by the Council. However, the appellant was aware that the Council Officer would be writing a report to be considered by an internal body.
  9. The appeal was lodged only 7 working days after the expiry of the agreed 7 July deadline, when the appellant was already aware of the likely outcome. Subsequent discussion took place about highway issues, but at that point the applicant was already aware of the existing reason for refusal. Therefore, whilst I agree that there was some delay in issuing a final decision, the likely content of that decision was already known. Therefore, I do not consider that the Council acted unreasonably in procedural terms.
  10. Turning to whether the Council has behaved unreasonably in defending the appeal, the appeal decision<sup>2</sup> relating to an adjacent site was relevant. However, the Council did not ignore that decision. Rather it argued that subject appeal site was different from the adjacent site. It said that the subject site was to the rear of residential development and surrounded by fields whereas the other site was to the front of the road and between existing houses. Therefore, the specifics of the respective sites were referred to by the Council.
  11. Its development plan, like many others, defines areas outside settlement boundaries as open countryside. Ultimately, the weight to be given to other appeal decisions and the characteristics of a site are matters of planning judgement which it was legitimate for the Council to exercise.
  12. It is suggested that the reasons that the Council said it would have refused the application were unsupported by objective analysis. Although I agreed in the main appeal that visibility of the site from surrounding roads would be limited, the Council referred to a relevant Landscape Character Assessment (LCA) which identified glasshouses as characteristic features of the rural area which also had some historic resonance. Again, it was a matter of judgement whether the site had more affinity with the surrounding countryside or adjacent housing. The effect of the loss of the greenhouses was also a matter of judgement, given the content of the LCA.
  13. With regard to the interpretation of para 55 of the National Planning Policy Framework (the Framework)<sup>3</sup>, it appears that the Council took the view that because the site was outside the settlement boundary and, therefore, defined as open countryside by the development plan, the exceptions in paragraph 55

---

<sup>2</sup> APP/P1615/W/16/3145132

<sup>3</sup> Published March 2012

applied. I found that analysis incorrect in that it failed to consider first, whether the proposal would create 'isolated' homes in the countryside. The exceptions would only then become relevant. The adjacent appeal decision, already referred to, was germane to that aspect but the Council had already sought to distinguish that appeal site from site subject to this appeal. The response from the Forward Planning Officer was something to be considered but, ultimately the deciding Officer was not bound by the view of a consultee.

14. The interpretation and application of parts of the Framework is not without controversy and evolves, as case law testifies. In any event, the Council's Statement of Case was more directly concerned with the site's location outside the settlement boundary, its alleged effect on the character and appearance of the countryside and the loss of a horticultural/agricultural use. Therefore, the paragraph 55 element was not decisive.
15. It is alleged that the Council failed to determine similar cases in a consistent manner. It is a truism, recognised by both parties, that each application is considered on its own merits. I can appreciate the applicant's frustration that cases which, on the face of it, may appear similar can have different outcomes. The specific application referred to, relating to Land at Southern's Barn<sup>4</sup>, involved a site which adjoined an existing allocated site, where permission had been granted to form 25 dwellings. It was also adjacent to a number of listed buildings.
16. Whilst the applicant refers to the 'great weight' that the Framework places on conserving designated heritage assets, the Council's Conservation Advisor's assessment was that in that case it would be unreasonable to refuse the application on heritage grounds. Therefore, that harm was found to be less than substantial and was ultimately outweighed by public benefits, in accordance with paragraph 134 of the Framework. No adverse impact on the character and appearance of the landscape was considered to exist at that site.
17. Therefore, given the particulars, whilst it is possible to draw some parallels which support of the applicant's proposal in the main appeal, the fact that the decision was different does not demonstrate inconsistent decision-making to the point of unreasonableness.
18. Overall, whilst I ultimately took a different view from the Council in the main appeal, I am not persuaded that it has acted unreasonably.

## **Conclusion**

19. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award is made.

*Jonathan Tudor*

INSPECTOR

---

<sup>4</sup> P0592/17/OUT