



Costs Decision

Hearing Held on 14 March 2018

Site visit made on 14 March 2018

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2018

Costs application in relation to Appeal Ref: APP/L3245/W/17/3181409 Dorrington Cottage Farmhouse, Bearstone Road, Pipegate, Market Drayton TF9 4HD

- 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 Shropshire Council for a full award of costs against Mr Geoff Sutton.
 - The hearing was in connection with an appeal against the refusal of planning permission for a windfall residential development of farm outbuildings at Dorrington Cottage Farmhouse.
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Decision

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

The submissions

2. The Council's case was made in writing in advance of the hearing. The appellant's response was made orally at the hearing. Details of the appellant's oral submission are set out in the Annexe at the end of the decision.

Reasons

3. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. Paragraph 053 of the NPPG sets out the type of behaviour that may give rise to a substantive award of costs against an appellant. This states that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs being made against them if the appeal or grounds of appeal had no reasonable prospect of succeeding. This may occur where material considerations are advanced but that there is inadequate supporting evidence.
5. As stated in my decision letter, the appellant's evidence regarding whether the Council can currently demonstrate a five year housing land supply (5YHLS) focuses on the Council's 2016 Five Year Housing Land Supply Statement (2016 HLSS), the HLSS that was current at the time that the Council determined the application that is the subject of the appeal. However subsequent to the Council's decision a revised HLSS was published in September 2017 (2017

HLSS) and this states that the Council has a 6.04 years housing land supply. Whilst the 2017 HLSS was published after the appeal was submitted, the Council referred to it in its appeal statement dated November 2017. The Council's statement also made reference to numerous appeal decisions and provided a detailed response to the appellant's evidence regarding 5YHLS.

6. I acknowledge that the appellant is entitled to question whether the Council has a robust 5YHLS and that at the time that the appeal was submitted, the 2016 HLSS was the Council's most up to date position on 5YHLS. However, in failing to update the evidence relied upon in respect of 5YHLS, in failing to adequately respond to and provide any substantive and compelling evidence to contradict the Council's very detailed and substantial evidence in respect of its 5YHLS and in pursuing his position that the Council does not have a 5YHLS, the appellant has behaved unreasonably. The appellant's 5YHLS position resulted in the need for a hearing to take place prior to the appeal to being determined and required the Council to produce additional evidence relating to 5YHLS both in writing and during the hearing. This has directly resulted in the Council incurring unnecessary expense in the appeal process.
7. Though I have had regard to the oral submissions made on behalf of the appellant at the hearing, for the reasons stated above and in my decision letter, I do not consider that sufficient evidence was produced to support his position in relation to 5YHLS.
8. Though I note that the Council is seeking a full award of costs and whilst I am satisfied that the recovery of the additional costs incurred in relation to the issue of 5YHLS and in preparing for and attending the hearing are justified, the Council's application focuses solely on the issue of 5YHLS and makes no reference to the second reason for refusal relating to highway safety or to the issue of whether or not the appeal site is located within a settlement.
9. At the hearing the Council conceded that under certain circumstances it is possible to attach conditions on land beyond the application site boundary (site edged red) and although the concerns regarding highway safety remain unresolved, I do not consider that the appellant behaved unreasonably in defending his position in relation to this issue.
10. Similarly evidence was produced to explain why the appellant considers the appeal site to fall within the community hub of Woore, Ireland Cross and Pipe Gate. At the hearing the Council stated that the boundary of the community hub is not defined on a plan. Consequently whether or not a particular site falls within it or not is a matter of judgement. Whilst as can be seen from my decision letter I agree with the Council's judgement on this issue, I do not consider that the appellant behaved unreasonably in taking a different view and I am satisfied that adequate evidence was produced to support his view, albeit I do not agree with it.
11. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the NPPG has been demonstrated in relation to the issue of 5YHLS and that this also led to unnecessary or wasted expense in preparing for and attending the hearing. Accordingly a partial award of costs is justified.

Costs Order

12. 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 Mr Geoff Sutton shall pay to Shropshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the issue of 5YHLS and in relation to preparation for and attendance of the hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Mr Geoff Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Beverley Wilders

INSPECTOR

Documents

- a) Costs application

Annexe: Submissions made orally at the Hearing on behalf of the appellant

14. It is unreasonable for the Council to cite appeals in locations outside of designated community hubs within which the appeal site is in but also to cite appeals for housing estates as a means to combat this application for two windfall units on the site of two existing rural buildings.
15. The appellant has demonstrated at least a 20 unit shortfall in figure of 2016 when consider aged extant permissions that comprise part of Appendix A of the Council's Housing Land Supply Statement and the Council's reliance on windfall sites to bolster the 20 unit shortfall.
16. The appeal is justified in these terms and is not unreasonable.