



Costs Decision

Hearing Held on 17 January 2018

Site visit made on 17 January 2018

by M Seaton DipTP MRTPI

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

Decision date: 23 July 2018

Costs application in relation to Appeal Ref: APP/C2741/W/17/3180738 Land South of Mayfields, Dauby Lane, Kexby, York, North Yorkshire

- 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 City of York Council for a full award of costs against Mrs Susan Goodwill.
 - The hearing was in connection with an appeal against the refusal of planning permission for the construction of a rural workers dwelling on land to the south of Mayfields required in connection with Primrose Bank Nurseries.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive.
3. The application for costs was made in a timely fashion during the course of the appeal, with both the application by the Council and written response by the appellant received in advance of the Hearing.
4. The Council contends that the appellant has acted unreasonably in bringing the planning application to appeal on the basis of there being an absence of any justification of a functional need for an isolated dwelling in the countryside, and in respect of the Green Belt, a failure to adequately demonstrate and substantiate the very special circumstances required to justify inappropriate development. As a consequence the Council has opined that the appellant had little or no chance of success in respect of the appeal.
5. The Planning Practice Guidance sets out that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. Such a situation is highlighted as being possible if the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or

where other material considerations are advanced, there is inadequate supporting evidence.

6. In this instance, in the absence of an adopted Development Plan, the appellant sought to advance the proposed development with reference to the National Planning Policy Framework (the Framework), with regards to Section 3 (*Supporting a Prosperous Rural Economy*), Section 6 (*Delivering a Wide Choice of Quality Homes*), and Section 9 (*Protecting Green Belt Land*).
7. On the basis of the submitted evidence, it was clear that the crux of the appeal revolved around whether a functional need for the development could be demonstrated in connection with the operation of the existing business on the appeal site. I acknowledge that the position related to isolated dwellings in the countryside and the interpretation of paragraph 55 of the Framework altered during the course of the appeal. Whilst I am mindful that this resulted in the proposed dwelling not triggering an assessment against paragraph 55, the requirement to establish a functional need for the development was nevertheless the critical aspect in establishing whether the development was necessary to support the existing business and thus the rural economy, and also in the context of whether very special circumstances were established in the context of inappropriate development within the Green Belt.
8. I have no doubt that the appellant clearly sought to establish within their written and verbal submissions that such a functional need existed. Whilst ultimately I concluded within the main appeal decision that a functional need did not exist for the proposed dwelling to support the existing enterprise, I am not persuaded that the appellant was pursuing a 'clear-cut' case with no prospect of success. In exercising their right of appeal, the appellant's submitted evidence reasonably sought to address the substance of the reasons for refusal, and whilst it did not establish the necessary justification to successfully support the case, I disagree with the Council's assertion that it fell so significantly short of achieving this as to represent unreasonable behaviour.
9. The Council has indicated that during the application process the appellant was repeatedly requested to justify the various elements of the justification of functional need, but declined to do so. However, on the basis of the documentation submitted during the course of the planning application, I disagree with this contention.
10. A detailed Rural Business Appraisal was submitted to support the planning application which incorporated details of the existing business and its operation in conjunction with the undertaking of a functional test, in accordance with former national policy in Annex A of PPS7: Sustainable Development in Rural Areas. Furthermore, it is evident that an exchange of e-mails and submission of further information occurred during the course of the planning application, leading up to the date of the Council's decision. The fact that the Council did not agree with the content of the later submissions and attempts to address the outstanding matters leading to the reason for refusal, would not in itself constitute unreasonable behaviour by the appellant.
11. On the basis of the above conclusions, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

12. For the reasons given above, I refuse the application for an award of costs.

M Seaton

INSPECTOR