The Planning Inspectorate

Costs Decision

Site visit made on 5 November 2018

by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th November 2018

Costs application in relation to Appeal Ref: APP/A0665/W/18/3198387
Land adjacent to The Dairy, Marbury Road, Anderton with Marbury, Anderton, Northwich, Cheshire CW9 6AQ

- 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 & Mrs Tudor for a full award of costs against Cheshire West & Chester Council.
- The appeal was against the refusal of planning permission for the erection of a specialist bungalow.

Decision

1. The application is allowed in the terms set out below.

Reasons

2. 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.

3. The Planning Practice Guidance sets out that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications or by unreasonably defending appeals. Examples of unreasonable behaviour are set out in Paragraph 049[1]. These examples 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; acting contrary to, or not following well-established case law and, refusing to enter pre-application discussions, or to provide reasonably requested information.

4. It is the applicants' claim that the Council behaved unreasonably by persisting in a fundamental objection to the principle of the erection of a single bungalow on the site on the basis that it constituted inappropriate development in the Green Belt, despite an appeal decision in 2015[2] in which the Inspector concluded that the development constituted limited infilling in a village and so was not inappropriate development. Accordingly the Council failed to have regard to the principles of consistency or that a decision had been made by a 'superior authority'.

[1] Reference ID: 16-049-20140306
[2] Appeal ref: APP/A0665/A/14/2228579

5. In addition, the applicants' contend that the Council refused requests for meetings and thereby failed to properly engage in the process. Furthermore they claim that the case was poorly managed in that correspondence was unavailable to view; there was no evidence that the officer had carried out a site visit; discriminatory and upsetting comments made by an objector were not promptly removed from the website and an alleged 'call-in' to Committee by a local councillor had not occurred.

6. The Council respond by stating that an assessment of the proposal, taking into account the previous appeal decision and case law, was undertaken in a detailed and comprehensive report. The report clearly sets out the reasons for refusing the application. The Council also provided a detailed written response to the appellants prior to the submission of the application, setting out the procedures and advice. The appellants chose not to submit a pre-application enquiry and during the application there were a number of emails between the officer and appellants. This demonstrates the Council's co-operation. The Council accepts that the presence of the neighbour comments on the website was regrettable but considers that this did not have a bearing on the determination of the refused application. Accordingly the Council considers that there are no grounds for an award of costs.

7. I have carefully considered all the evidence supplied to me. I acknowledge that the officer's report, which runs to just over 6 pages, is detailed. It sets out at paragraph 6.3 that the previous Inspector 'deemed that it was infill and so was not inappropriate development'. Nevertheless it goes on to set out why the Inspector's conclusions were 'misjudged'. That view was informed primarily by the location of the site outside the settlement boundary and the assertion that it is unlikely that the boundary will be amended in the emerging Cheshire West and Chester Local Plan Part 2 (Land Allocations and Detailed Policies). In addition, although the Council recognise the site's proximity to limited services and amenities, it considers it to be outside the village by virtue of, amongst other things, its status as a greenfield site and its visual characteristics.

8. However, it is clear from the appeal decision that these issues were taken into consideration by the Inspector at the first appeal. The emerging Local Plan, which carries limited weight, does not change matters in terms of the settlement boundary and therefore has no bearing on the case. There are no new material circumstances, either in terms of policy or site circumstances that might lead to a different conclusion as to whether the proposal constitutes inappropriate development. Moreover, the Council has not applied the principles of consistency and has not given the appeal decision appropriate weight in terms of its findings on whether the proposal constitutes limited infill development. In other words, the Council has persisted in objections to an element of a scheme which an Inspector has previously indicated to be acceptable, contrary to the guidance of the PPG.

9. The officer's report goes on to discuss the impact of the development on openness, a matter on which the previous Inspector found harm. Nevertheless the Council was clearly aware of the Lee Valley Appeal Court judgment[3]. That

[3] *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404

judgement, which supersedes the appeal decision, clearly sets out that where development is found to be 'not inappropriate' applying paragraphs 89 or 90 of the Framework, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt.

10. The judgment makes it clear that there is no place for a subsequent assessment of the effect of the development on Green Belt openness. Impact on openness is implicitly taken into account in the exceptions unless there is a specific requirement to consider the actual effect on openness. Therefore, for those exceptions within paragraph 89 where the effect of the development on openness is not expressly stated as a determinative factor in gauging inappropriateness, there is no requirement to assess the impact of the development on the openness of the Green Belt.

11. Whilst the case related to agricultural rather than residential development in the Green Belt, it nevertheless sets out principles with regard to the issue of openness. The failure to properly consider case law in this respect amounts to unreasonable behaviour.

12. The appellants did not apply for pre-application advice. On that basis, whilst the Council's response to the appellants before the submission of the application may have been limited, I am not persuaded it was unreasonable. The lack of clear information as to whether a site visit took place, the failure to remove inappropriate material from the website promptly and confusion over the call-in procedure, are regrettable. However, these matters have not resulted in any unnecessary expense in the making of the appeal.

13. Nevertheless, for the reasons set out, I conclude that the Council has acted unreasonably. Had the Council acted in a manner consistent with the previous appeal decision and correctly applied the principles of case law, there would have been no need to have considered special circumstances. Moreover, the appeal could have been avoided. As a result, the appellants have incurred costs in the making of the appeal.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

15. 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 Cheshire West and Chester Council shall pay Mr & Mrs Tudor, the costs of the appeal proceedings described in the heading of this decision.

16. The applicants are now invited to submit to Cheshire West and Chester Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Ashworth

Inspector