



Costs Decision

Hearing held on 9 July 2019

Site visit made on 9 July 2019

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2019

Costs application in relation to Appeal Ref: APP/R0660/W/19/3220282 Coole Acres, Coole Lane, Newhall CW5 8AY

- 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 Brian Reilly for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission to vary conditions 18 and 29 pursuant to planning approval 09/0819N.
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Decision

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

Reasons

2. The *Planning Practice Guidance* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application of costs is made on a number of substantive grounds. Firstly, it is argued that during the application process the Council did not discuss any of their concerns regarding the application with the applicant. It is argued that if they had the applicant may have been able to provide evidence and explanations that would have overcome the Council's concerns regarding the financial information submitted and with regard to the use of the business facility. As such, the need to address these matters at appeal stage could have been removed.
4. Whilst I note that the *National Planning Policy Framework* (the Framework) encourages proactive working with applicants, it also encourages pre-application discussions to take place, which I understand the applicant decided not to undertake. The application was accompanied by a large amount of supporting information particularly regarding the functional need for buildings and the financial soundness of the business. Despite this, it is clear that the Council considered that the changes that had occurred in the way the business operated meant that they considered there was no longer an essential need for the dwelling.
5. Whilst I accept that the applicant may not agree with the Council's approach or the conclusions they came to, given the fundamental nature of their objections,

made on the basis of the extensive supporting evidence, I do not consider that they have acted unreasonably in not entering into negotiations with the applicant, as further information was unlikely to have changed their overall position.

6. The reason for refusal makes no reference to any objection to the business facility or to the changes sought to condition 29. However, as these form part of the application subject of the appeal, the applicant's appeal statement would have needed to cover these issues at least briefly. As such, dealing with these matters does not represent a wasted or unnecessary expense for the applicant.
7. Secondly, it is argued that the Council has failed to provide any evidence in support of what the applicant claims is the only issue raised in the delegated report in relation to the functional need for the dwelling. In addition, it is claimed that the LPA has then raised new issues in this regard within their appeal statement.
8. The application had a single reason for refusal which relates to the essential need for a rural workers dwelling. The reason for refusal sets out the development plan policies to which the Council considered the scheme would be contrary as well as highlighting that it would conflict with the Framework. This is a proper planning ground and clearly relates to issues that would need to be addressed in determining the application.
9. The delegated report summarises the applicant's case related to essential need, as well as setting out why when the original application was considered a temporary dwelling was considered acceptable. It specifically highlights that the fish rearing side of the business has changed since the original application was determined, and as this was part of the reason allowing the dwelling, it indicates that this reduces the essential functional need. At the hearing it was confirmed by the appellant that the current fish rearing processes are far less intensive, which supports the Council's position.
10. I accept that the Council's appeal statement does address other matters related to functional need such as site security, predators and the maintenance of aeration systems. However, these were issues set out in the applicant's evidence as reasons why he considered a permanent presence was necessary. As such, the Council is simply responding to the applicant's own evidence and has not raised new issues that he has not previously considered. As a result, I do not consider the Council has acted unreasonably in this regard.
11. Thirdly, it is argued that the Council has not taken into account all the evidence submitted by the applicant and therefore has not made a balanced assessment of the case.
12. The application was accompanied by a large amount of supporting material including a range of financial information. Whilst the delegated report might not make reference to each piece of submitted information, that does not mean that it was not taken into account. The delegated report assesses both the functional and financial need for a dwelling on the site, and considered the proposal against the relevant development plan and national policies. As such, I am satisfied that the Council has properly assessed the application. Whilst the applicant may not agree with the conclusions that the Council has drawn from the evidence, this does not mean that the Council has acted unreasonably.

13. The applicant has also highlighted that the revised layout was originally subject to a separate application¹ which sought simply to vary condition 29. It is stated that the Council requested this application to be withdrawn and that it should form a composite application dealing with both condition 18 and 29. It is claimed that the Council provided no satisfactory explanation as to why this was necessary. Be that as it may, this appeal relates to a separate application and the Council's actions with regard to previous applications are not matters that are before me at this appeal. Moreover, ultimately the decision whether or not to withdraw an application rests with the applicant not the Council.
14. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated, and a full award of costs is not justified.

Alison Partington

INSPECTOR

¹ Application Reference 14/3925N