



Costs Decisions

Hearing Held on 17 September 2019

Site visits made on 16 September 2019 and 17 September 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Costs application A in relation to Appeal Ref: APP/T0355/W/18/3216170 Land north of Coningsby Lane, Fifield, Maidenhead SL6 2PF

- 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 Mrs Helen Kendall Smith for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The hearing was in connection with an appeal against the refusal of planning permission for construction of permanent essential worker's dwelling, new access and track with entrance gates, hardstanding and new boundary treatment.
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Costs application B in relation to Appeal Ref: APP/T0355/W/19/3227886 Land north of Coningsby Lane, Fifield, Maidenhead SL6 2PF

- 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 Mrs Helen Kendall Smith for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a rural worker's dwelling.
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Decision

Costs application A

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

Costs application B

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

Preliminary Matter

3. Costs applications A and B were both made in writing by the appellant, and responses to both were received in writing from the local planning authority (LPA), in advance of the hearing. At the hearing, both parties confirmed that they did not wish to add anything further to those original written submissions, and the appellant confirmed that they did not wish to provide any final comments on either of the LPA's written responses.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
5. The PPG advises that LPAs are at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations; for vague, generalised assertions about a proposal's impact; for failing to grant permission for a scheme that is the subject of an extant permission where there has been no material change in circumstances; or for refusing to provide reasonably requested information when a more helpful approach would probably have resulted in the appeal being avoided, or the issues being narrowed.

Costs application A

6. It appears that the appellant was advised of the LPA's intention to refuse the application quite late in the application process, despite having seemingly sought feedback on numerous occasions, including with regard to the size of the dwelling proposed. However, on the basis of the submissions before me, and as the LPA also resolved to refuse a subsequent application despite reductions having been made to the size of the dwelling, I am not persuaded that its objections in that regard would have been overcome, even had such further discussion with the appellant taken place. Therefore, whilst the LPA's communication with the appellant could perhaps have been better, I conclude that its actions have not led to an appeal which could otherwise have been avoided, and do not amount to unreasonable behaviour.
7. The appellant refers to disparities and vagaries in the LPA's report, but is not specific as to the nature of those matters referred to. The LPA clearly set out its reasons for refusal on its decision notice, with reference to development plan policy and national policy. It provided a detailed appeal statement and further evidence at the hearing, substantiating those reasons for refusal, with reference to relevant policies regarding development in the Green Belt, and setting out its particular concerns regarding those aspects of the proposed dwelling which it considered to be too large. Whilst I have reached a different conclusion to the LPA on some of those matters, the LPA's reasoning is nonetheless clear, and it was not unreasonable in reaching the conclusions it did, as a matter of planning judgement.
8. I understand that permission has been granted for a similar dwelling at the appellant's existing farm in Gloucestershire. However, that site is in a different LPA area and is not in the Green Belt. It is clear that the Council had regard to the appellant's existing business in considering the appeal proposal. However, the dwelling which has been permitted at that other site was approved in materially different circumstances, including with regard to its designation and policy context, compared to the current appeal proposal. Accordingly, the LPA was not unreasonable in reaching a different conclusion, having regard to the relevant development plan policies and site designation in this case.

Costs application B

9. There appears to have been some delay in the LPA finalising its reasons for refusal following the resolution of its planning committee to refuse permission for the development. That delay ultimately led to the appellant's decision to submit an appeal against non-determination. However, it is clear from the submissions before me that the LPA's intention to refuse the application was made clear at the committee meeting. I recognise the appellant's frustration at the delay. However, it was of relatively limited duration, and I have no reason to believe that the LPA's decision would have been any different had those reasons been finalised and a decision notice issued sooner. Therefore, the LPA's actions have not ultimately led to an appeal which could otherwise have been avoided, and do not amount to unreasonable behaviour.
10. An LPA is not duty bound to follow the advice of its professional officers. However, if a different decision is reached, the LPA must clearly demonstrate on planning grounds why a proposal is unacceptable, and provide clear evidence to support that reasoning.
11. In this case the LPA provided putative reasons for refusal which clearly set out its objections to the proposal, with reference to relevant development plan and national policies. In its statement and at the hearing, the LPA provided further evidence to substantiate those reasons for refusal, including with reference to particular concerns regarding the size of the dwelling proposed, and to there being no existing rural enterprise on the site at present.
12. It will be seen from my decision that I agree with the LPA that, overall, the development is unacceptable in the absence of an existing associated rural enterprise on the site. I have reached a different conclusion to the LPA on other matters of detail. However, I am satisfied that the LPA provided sufficient evidence to substantiate its reasons for refusal, and was not unreasonable in reaching the conclusions it did as a matter of planning judgement.

Conclusion

Costs application A

13. For the reasons given, I conclude that unreasonable behaviour, as described in the PPG, has not been demonstrated. Accordingly, I conclude that the appellant has not been put to unnecessary or wasted expense in the appeal process. An award of costs is therefore not justified.

Costs application B

14. For the reasons given, I conclude that unreasonable behaviour, as described in the PPG, has not been demonstrated. Accordingly, I conclude that the appellant has not been put to unnecessary or wasted expense in the appeal process. An award of costs is therefore not justified.

Jillian Rann
INSPECTOR