



Costs Decision

Site visit made on 4 October 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Costs application in relation to Appeal Ref: APP/C1625/W/19/3230777 The Dutch Barn, Calf Way, Bisley, Gloucestershire (390287, 206759)

- 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 Dickenson against Stroud District Council.
 - The appeal was against the refusal of the Council to grant planning permission for development described on the application form supporting application Ref S.19/0399/FUL as 'change of use of existing agricultural building to a single dwelling, including associated works (resubmission following determination of application S.17/2710/FUL)'.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains that costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.² That is relevant in this instance. The appellants' application for a full award of costs is on both procedural and substantive grounds.
3. As applied via Regulations, Section 234 of the Local Government Act 1972 as amended makes provision for the authentication of documents by the 'proper officer' of the authority. In that context the Council's Scheme of Officer Delegations (republished August 2018) sets out how various actions and decisions may be taken by officers as opposed to Members or at committee meetings.
4. Section C5A and Appendix A of the Scheme of Officer Delegations make provision in relation to development control. The appellants aver that the Council failed to follow that protocol, as application S.19/0399/FUL was refused without consideration at committee (thereby depriving them, and others, of the opportunity of advancing arguments in favour of the proposal in that context).
5. Somewhat interconnected with their procedural concerns, the appellants state that the Council made three substantive errors in assessing the development proposed. Firstly they contend that the Council erroneously assessed the proposal as for a rural workers' dwelling, which was not proposed. Secondly the

¹ Reference ID: 16-028-20140306.

² Reference ID: 16-032-20140306.

argument is made that the Council failed to recognise the differences between application Ref S.19/0399/FUL and previously refused application Ref S.17/2710/FUL for similar works, referring to a letter from the Council of 15 April 2019 which indicates that the proposals are 'identical'. Lastly the appellants' say that the application was refused on vague, generalised assertions and should clearly have been permitted (had the Council worked proactively to arrive at a mutually agreeable solution in line with NPPF paragraph 38).³ I address those points in order.

6. On a plain reading of the Scheme of Officers Delegations, it is a matter of discretion or judgement rather than an automatic process as to whether applications are referred for determination at Development Control Committee (Appendix A, section I.). That process involves consultation between the Committee Chair/ Vice Chair and the Planning Manager/ Development Manager; there is no suggestion that did not occurred in this instance (Appendix A, section I., paragraph (a)). Given the planning history to the appeal site, relevant planning matters would have been considered previously.⁴
7. Section II. sets out various 'requirements for reference of items to DCC [Development Control Committee]'. Requirement 2.(a) is whether a proposal has 'generated significant public interest which has given rise to contradictory views as to whether the application should be approved or refused...'. The letter of 15 April 2019 referred to above cites earlier correspondence on behalf of the appellants which explains that 'no letters of objection [to the proposal] were received'. That does not appear to meet the requirements of Appendix A, section II., paragraph 2.(a). There is also no indication in the information before me as to the outcome of any complaint made in this respect (to whichever body, or in whatever context).
8. Let me take the hypothetical scenario that I am incorrect in my reasoning in respect of the procedural argument advanced, effectively hypothesising that the decision notice in respect of application Ref S.19/0399/FUL was not arrived at via the correct procedure. The potential implication of that scenario is that the decision notice would cease to exist (which, incidentally, takes the appellants no further forward in terms of their proposal). Under that scenario, theoretically, the appellants could have appealed against the Council's failure to take a decision under Section 78(2) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').⁵ As that route also ends up at appeal, it cannot be said that the actions of the Council directly resulted in their incurring unnecessary expense. Under Section 79(1) it is open to an inspector appointed by the Secretary of State to deal with the application as if it had been made to him or her in the first instance. As stated in the appeal decision, I dismissed the proposal, having assessed it in line with the statutory basis for decision-taking.⁶ Therefore we arrive at the same outcome following that hypothetical scenario through.
9. It is unclear whether the appellant's concern that the Council in error assumed that the proposed barn conversion was for a rural workers' dwelling- with

³ Examples of behaviour that may justify a substantive award of costs in PPG Reference ID: 16-049-20140306.

⁴ Notwithstanding the provisions of Section 170B of the 1990 Act, namely the power to decline to determine overlapping applications.

⁵ Albeit the associated appeal relates to Section 78(1).

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

reference to policy CP15, criterion 1., of the Stroud District Local Plan (adopted 19 November 2015, the 'LP') or National Planning Policy Framework paragraph 79(a) ('NPPF')- relates to application Ref S.19/0399/FUL or to S.17/2710/FUL. However that does not matter. The Council's officer report associated with the current proposal explains that 'the proposal is not to provide a rural workers dwelling in relation to the wider farm holding'.

10. Paragraph 5.12 of the appellant's appeal statement explains that 'the Appellants do indeed farm the adjacent land and run a successful farm shop...'. Many who made representations in support of the scheme explained the benefits of the proposal to the appellants' working of the land, running of the shop, and to the fabric of the community. I note in particular the representation of Bisley-with-Lypiatt Parish Council who state that 'there is an essential need to live in this community...', and that an agricultural tie could 'ensure the dwelling occupancy remains tied to the land use'.
11. There is therefore a degree of judgement involved as to whether the proposal would, in actuality, amount to a rural workers' dwelling. Moreover, as a matter of fact, the appeal site falls beyond the established settlement boundary of the nearest village of Bisley set via the development plan. One exception to the general restriction of development beyond such limits is where, under LP policy CP15, a proposal would meet the essential needs of rural workers. Therefore, setting aside that the proposal was not for a rural workers' dwelling, the Council's consideration of the proposal in that light might be argued to be a positive approach rather than misinterpretation (looking towards a potentially permissible type of development).
12. The proposal in application Ref S.19/0399/FUL and previously refused application Ref S.17/2710/FUL are similar in that they propose the conversion of the same barn. However the officer report explains the difference between the two, chiefly in relation to landscaping and access (and also between application Ref S.17/2710/FUL and preceding application Ref S.17/0605/FUL). That is despite the description of development given in the application form supporting application Ref S.19/0399/FUL, which states the proposal is a 'resubmission', which is suggestive of a like-for-like scheme. There is no furthermore no indication in NPPF paragraph 38, or elsewhere, that a positive process of engagement between Council and appellant is capable of rendering any scheme acceptable.
13. Procedural concerns are inter-linked with the appellant's substantive arguments; there is the suggestion that certain material considerations were overlooked or given insufficient weight that should have been considered at Committee. I disagree. Planning policies often contain broad statements and pull in different directions. As detailed in the associated appeal decision, the suggestion that CP15 is inconsistent with NPPF 79(c) does not hold water; the former also envisages the potential suitability of conversion. In any event the Council considered the substance of the 'enhance its immediate setting' element of that latter policy. I note paragraph 5.10 of the appellant's statement of case explains how 'the requirements of CP15 closely mirror those of [NPPF] paragraph 79.'
14. Moreover I have reached the same decision as Stroud District Council regarding the merits of the proposal. That does not vindicate any procedure or reasoning

on their part. However it establishes that it is not the case that planning permission should clearly have been granted; the Council's decision stands scrutiny relative to the statutory approach to decision-taking. Moreover it also indicates that the appellant did not incur unnecessary expenditure; the dispute was a matter of planning judgement based on an extensive planning history, rather than their hands being forced into an appeal by consequence of unreasonable behaviour.

15. I appreciate the appellant's position, the local support for the proposal, and the evident disappointment with the Council's decision. However, for the above reasons and with regard to the approach in the PPG, it has not been demonstrated that inappropriate behaviour resulting in unnecessary or wasted expenses occurred. In my view the Council's opposition to the current scheme was reasonable, arrived at through appropriate procedures, and founded on sound judgements with regard to the development plan and to relevant material considerations.

Conclusion

16. Having taken account of all other matters raised, I therefore conclude that no action or inaction taken by the Council in this instance amounts to unreasonable behaviour resulting in unnecessary expense. Accordingly, and with reference to the approach in the PPG, an award of costs is not justified.

Thomas Bristow

INSPECTOR