Costs Decision

Site visit made on 24 September 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2019

Costs application in relation to Appeal Ref: APP/P1805/W/19/3231487 Jasmine Cottage, Gravel Pit Lane, Rowney Green B48 7QG

- 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 C Meuwissen for a full award of costs against Bromsgrove District Council.
- The appeal was against the refusal of planning permission for the erection of a new agricultural building.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. PPG further indicates that local planning authorities will be at risk of an award being made against them if they prevent or delay development which should clearly be permitted having regard to local and national policy, if they fail to produce evidence to substantiate each reason for refusal or if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The applicant submits that the Council has acted unreasonably in these regards.

4. The single refusal reason refers to inappropriate development in the Green Belt. However, it explicitly states that "the development is considered to be inappropriate, by virtue of the siting of the building and proximity to other dwellings." Moreover, on several occasions the officer report also considers the effect on the openness of the Green Belt and the character and appearance of the locality as if these were the same issue[1]. Therefore, the Council's decision does seem to conflate the main issues, which as a result is somewhat confusing and, as will be seen from my decision, does not reflect the approach to development in the Green Belt in national policy.

5. Accordingly, given that the Council found the proposal fell within the exception for new building in paragraph 145(a) of the National Planning Policy Framework

[1] 3rd main issue, page 3 Officer Report

(the Framework)[2], to interpret national policy as the Council did in subsequently finding inappropriate development was inaccurate and unreasonable. As such, the proposal should not have been prevented on this basis.

6. Nevertheless, although not clearly differentiated in the decision notice, the officer report goes on to set out in reasonable detail[3], and with reference to relevant development plan policies why it was considered that the proposal would result in visual harm to the character and appearance of the area. Therefore, in this regard, notwithstanding that I ultimately reached a different view, I do not consider that the Council acted unreasonably.

7. Although the applicant states that the reference to residential amenity within the refusal reason was unexpected, the evidence submitted includes emails between the main parties where it was stated[4] that notwithstanding the lack of objection from Worcester Regulatory Services, the impact to residential occupiers nearby remained a concern for the Council, who went on to suggest that any further alterations to the proposal would need to be made the subject of a fresh planning application rather than submitted in relation to the application that is the subject of this appeal.

8. In this context, it seems unlikely that the Council would have accepted the commissioning and submitting of noise and odour reports as part of the planning application. However, I acknowledge that having submitted the odour and noise reports as part of the appeal case, there was little specific response from the Council in relation to this evidence who consider that sufficient justification for the decision was provided in the original case officer report[5]. However, this amounted to two sentences[6] setting out generalised concerns. In the face of more detailed evidence, it was unreasonable of the Council to continue to rely upon generalised assertions about the proposal's impact, which were unsupported by any objective analysis.

9. I turn then to the matter of wasted expense. Given the proximity to surrounding residential properties and based on the limited evidence before them at the point they made their decision, I do not consider that the Council behaved unreasonably in coming to their initial conclusion in relation to the impact on living conditions. The applicant chose to test the substantive concerns at appeal, but it would have been necessary, in any event, for the applicant to prepare and provide more detailed information in relation to noise and odour impact and therefore, this was not wasted expense.

10. Furthermore, whilst criticism might be levelled at the Council for conflating Green Belt policy and concerns regarding the impact of the proposal on the character and appearance of the area, it seems likely that even if they had unambiguously concluded that the proposal was not inappropriate development in the Green Belt, their concerns regarding the visual impact on the character of the area would have remained. It would therefore have still been necessary for the appellant to test this matter at appeal. Given the conflation of the issues by the Council, the bulk of evidence in relation to the openness of the Green Belt prepared by the applicant equally related to the likely visual impact

[2] Page 4, second paragraph of the Officer Report
[3] Final paragraph page 4, Paragraphs 1 and 2 of Page 5, Officer Report.
[4] Dated 10-12 December 2018
[5] Paragraph 3, Council appeal statement
[6] Page 5, paragraph 4 of Officer Report

of the development on the character of the area, and so was not wasted expense.

11. As a result, although I find that the Council acted unreasonably in some regards, I do not consider that this put the applicant to unnecessary or wasted expense in testing the matter at appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector