The Planning Inspectorate

Costs Decision

Site visit made on 7 January 2020

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 18th February 2020.

Costs application in relation to Appeal Ref: APP/G2245/W/19/3235751
Farm Cottage, Oakdale Lane, Crockham Hill TN8 6RL

- 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 Michael Smart for a full award of costs against Sevenoaks District Council.
- The appeal was against the refusal of planning permission for retention of curtilage outbuilding, curtilage extension and construct outdoor swimming pool.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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. When submitting the appeal, the applicant sought to withdraw the swimming pool and associated works from consideration. They contend that the local planning authority (LPA) failed to substantiate the reasons for refusal relating to the curtilage extension and outbuilding. They further contend that the LPA's submissions in respect of the swimming pool and associated works were no longer relevant, and that the LPA was provided with the opportunity to avert the appeal through a new application without the swimming pool element.

4. Paragraph 49 of the PPG sets out that LPAs 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 or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include: failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

5. It was not within the gift of the LPA to determine whether the amendment would be accepted or not at the appeal stage. Given the advice in paragraph

M.2.1 of the Procedural Guide[1], the LPA had a reasonable expectation that the appeal might proceed on the basis of the proposal that it considered. It therefore made its case accordingly. While I have found that the swimming pool could be severed from the remainder of the scheme, the LPA was not unreasonable in defending the proposal as a whole.

6. Although the LPA's appeal statement considered all of the elements of the appeal scheme together, its officer report assessed them separately. It provided a reasoned assessment having regard to relevant national and local policy and guidance, as well as to relevant case law. It reached a reasoned conclusion that the proposals comprised inappropriate development in the Green Belt. While I have taken a different view on the weight to be given to the LPA's 'Development in the Green Belt' Supplementary Planning Document, I have reached the same conclusion in respect of the scheme before me.

7. The evidence before me includes email correspondence between the applicant and LPA seeking informal advice regarding a scheme without the swimming pool element. The LPA confirmed the day after the applicant's query that there would be reservations in respect of the reduced proposal. There is no evidence before me that a revised application was subsequently submitted to the LPA or that formal pre-application advice was sought. As such, the LPA appears to have been helpful in considering whether an alternative scheme might overcome their concerns and providing brief, but clear informal advice on the matter. Accordingly, no unreasonable behaviour has been demonstrated.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

L McKay

INSPECTOR

[1] Procedural Guide: Planning appeals – England, January 2020