
Costs Decision

Hearing Held on 25 February 2020

Site visit made on 25 February 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Costs application in relation to Appeal Ref: APP/P2935/W/19/3229827 Smalesworth Farm, Falstone, Hexham NE48 1DE

- 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 and Mrs S & K Hodgson for a full award of costs against Northumberland County Council.
 - The hearing was in connection with an appeal against the refusal of the removal of condition 4 relating to an agricultural workers condition.
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Decision

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

Procedural matters

2. The costs application was made by the appellants the day before the Hearing. The Council provided a verbal rebuttal at the Hearing. Both main parties were satisfied they were given adequate opportunity to consider the points raised.

Reasons

3. The appellants allege that: the Council has failed to agree or set out parameters of the required marketing exercise; the Council has failed to provide robust evidence or valuation to affirm its assertions in regard to the value attributed to the property; the valuation appears to be retrospectively attached to the original decision to support the case and to a decision that was made without such evidence; and that the valuation was submitted past the timeframe to submit evidence and two working days before the day of the Hearing.
4. The Council responded that: it sought advice from a surveyor to especially address its concerns in regard to the detail included in the marketing information; that the Valuation Report was provided on the basis that the Council considered that it would assist in the discussion; and that its timing was a result of other time pressures and procurement. Furthermore, the Council saw benefit of gaining further advice to provide some direct comparisons. The Council considered that the appellants would be able to absorb the further information quickly as this only added to existing evidence. Furthermore, the appellant had access to 'in-house' surveyors within the planning consultant's practice for advice if required.
5. The Planning Practice Guidance (the 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. The PPG is clear that a Council could be vulnerable to an award of costs against it if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, a Council could be vulnerable if it fails to produce evidence to substantiate a reason for refusal or introduces substantial evidence at a late stage necessitating extra expense for preparatory work.

Failure to establish marketing parameters

6. The evidence provided in the appellants' Statement indicates a substantial period of time took place and correspondence exchanged to attempt to determine a suitable marketing strategy. The Council has admitted that it has no published advice or criteria to establish the coverage or type of marketing expected to satisfy the policy. There is also no evidence before me to indicate that the Council provided further details of this requirement in correspondence with the Appellant. As such, I must concur with the applicant that there was a failure to be clear and precise in determining the extent of marketing required to satisfy the policy. However, although unhelpful I do not find this behaviour to be unreasonable. This is largely because I also came to a clear view in my main decision that the marketing was insufficient. It was therefore also reasonable of the Council to conclude that the results of the marketing exercise did not 'convincingly demonstrate' that the dwelling is not required for a rural worker.

Lack of robust evidence

7. The Council's Market Valuation included information in regard to the valuation of the property in consideration of comparable evidence. Consequently, the Council's Statement of Case and further evidence provided the necessary detail to substantiate its assertions in accordance with good practice in the PPG. Accordingly, in its entirety the Council's evidence was robust and the reason for refusal adequately justified.

The valuation being retrospective

8. The Council's valuation explored the value of the dwelling in early January 2019. This was when the Section 73 application, the subject of this appeal, was first submitted to the Council for consideration. Being therefore retrospective, this was useful as it ensured that values were comparable. I find this was a reasonable approach to take. Furthermore, this document was prepared to aid the Hearing. Moreover it is clear, without confusion, that this was not available to the Council when it made its original decision. There is therefore no apparent effort to retrofit this evidence to the original case.

The valuation being submitted two days prior to the Hearing

9. The timing of the submission exceeded the established deadlines set down in Annex E of the PINS procedural guide. The lead-in time to the Hearing was relatively long. The Council therefore had a substantial period of time between the appeal being lodged and the Hearing to commission external advice. An earlier submission of the evidence would have enabled all parties to have a more reasonable time to consider its implications. I sympathise that valuations may have begun to appear dated but the timing of the submission of the

further evidence was unfortunate. However, I have found that the evidence submitted provided useful analysis for my consideration of the case. Also, the appellant was content, albeit with some reluctance, that he had had sufficient time to consider the evidence and was therefore able to adequately respond to the issues it raised.

10. Accordingly, the evidence assisted in my consideration of the appeal and was accepted on that basis. Consequently, although the timing of its submission was unhelpful, I am satisfied that the appellant had a suitable period of time to respond to this evidence. I therefore do not find the Council's behaviour in this regard to be unreasonable. Moreover, as the evidence was relevant to the case, its consideration by the appellant did not result in his wasted expense.

Conclusion

11. In my main decision I have found that the proposal would conflict with the development plan. As such, the Council's decision to refuse the proposal was reasonable. Therefore, the decision in its entirety did not cause unnecessary delay to the applicant and an award of costs is not justified.
12. The Council's Market Valuation included important and useful expert opinion. Furthermore, the appellant was able to adequately react to this evidence and was content to proceed on those terms. I have therefore not found unreasonable behaviour resulting in unnecessary and wasted expense as described in the PPG, has been demonstrated.

Ben Plenty

INSPECTOR