The Planning Inspectorate

Costs Decision

Site visit made on 7 January 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th June 2020.

Costs applications in relation to Appeal Ref: APP/Z3635/W/19/3237690 Clock Bungalow, 191 Ashford Road, Laleham TW18 1RS

- The applications are 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 applications are made by Mr James Butler for a full and partial award of costs against Spelthorne Borough Council.
- The appeal was against the refusal of planning permission for change of use of land to extended residential curtilage for Clock Bungalow, 191 Ashford Road.

Decisions

1. The application for a full award of costs is refused. The application for a partial award of costs is allowed in the terms set out below.

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. The applicant contends that the Council has mis-interpreted paragraph 146 (e) of the National Planning Policy Framework (the Framework) and has made unsupported assumptions about perceived harmful future development of the land without any robust evidence. The applicant also holds that the Council failed to explore the possibility of attaching a condition removing permitted development rights in order to allay their concerns regarding the potential for further development on the site in the future. For these reasons the applicant considers that the appeal could have been avoided.

4. Whilst, in my decision on the appeal, I have indeed determined that the proposal would not represent inappropriate development within the Green Belt and granted planning permission accordingly, it does not necessarily follow that the Council have acted unreasonably in their understanding and application of the Framework.

5. Whether or not a proposal would be inappropriate development within the Green Belt is a matter of planning judgement following the application of the relevant policy. The Council have clearly set out their reasons for refusing the application on this basis.

6. Following their assessment that the proposal would represent inappropriate development within the Green Belt the Council went on to apply paragraph 144 of the Framework which sets out that substantial weight should be given to any

harm to the Green Belt and that very special circumstances (which are necessary to justify inappropriate development) will not exist unless the potential harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. No such circumstances were identified by the Council and, accordingly, they refused the application.

7. I acknowledge the applicant's view that the Council made unsupported assumptions about perceived harmful future development of the land. I also note the applicant's concern that the Council failed to explore the possibility of attaching a condition removing permitted development rights in order to allay their concerns regarding the potential for further development on the site in the future.

8. However, the Council reached the view that the proposal was inappropriate development and that very special circumstances were not present. Even if the Council had reached a different judgement around the perceived future impacts on openness, the outcome of the application is, in my view, highly unlikely to have been any different given the substantial weight which the Council would, nevertheless, have attributed to the definitional harm to the Green Belt by way of inappropriateness. Similarly, whilst the potential use of a condition removing permitted development rights may have been sufficient to overcome their concerns in respect of the potential future harm to openness, the condition would not have been sufficient to outweigh or overcome the definitional harm the Council had already found to the Green Belt.

9. Whilst my final conclusions differ from those reached by the Council, the reasons behind the Council's decision are clearly set out and a matter of judgement. Accordingly, I do not consider that the Council acted unreasonably and therefore the appeal could not have been avoided and unnecessary or wasted expense has not been incurred.

10. The applicant has also set out an application for a partial award of costs on the grounds that the Council proposed an unreasonable and irrelevant condition at appeal stage which does not relate to the proposal. The condition in question sets out a requirement for the submission of a scheme of the means of enclosure to be submitted to and approved in writing by the Local Planning Authority indicating the positions, design, materials and type of boundary treatment to be erected.

11. The documentation provided by the applicant is clear that no means of enclosure or boundary treatments are sought as part of this application. Therefore, in my view the Council's behaviour in suggesting such a condition was, indeed, unreasonable. The applicant's final comments document contains a section which is in place solely to refute the need for the suggested condition. As such, whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position, unnecessary and wasted expense was incurred in preparing the aforementioned section of their final comments and a partial award of costs is justified in this specific respect.

Conclusion

12. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated in relation to the Council's suggested

conditions at appeal stage. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Spelthorne Borough Council shall pay to Mr James Butler, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's suggested condition No 2 relating to details of a scheme of a means of enclosure.

14. The applicant is now invited to submit to Spelthorne Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

L J O'Brien

INSPECTOR