The Planning Inspectorate

Costs Decision

Site visit made on 2 June 2020

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2020

Costs application in relation to Appeal Ref: APP/C1435/W/20/3245859
The Old Fire Station, Fletching Street, Mayfield TN20 6TB

- 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 Besant for a full award of costs against Wealden District Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition of a redundant fire station building and erection of three dwelling houses.

Decision

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

Reasons

2. Paragraph 30 of the national Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The applicant submits that in their pursuit of pre-application advice that the Council did not respond in a timely or efficient manner, and that the lack of robust written advice led them to submit an application based upon early verbal responses. Moreover, that the delay led to the loss of any 'windfall' site allocations that might have been available. As such, the applicant submits that additional time and cost was incurred as a result of the need to contact the Council over a protracted period of time, and that the delay led to a lost opportunity in respect of 'windfall' site allocations set out in the extant local plan.

4. The Council contend, although one email to the applicant did not attract a response, that they kept the applicant informed at all stages of the planning process. Indeed, the Council assert, that the potential 'windfall' allowance could not be guaranteed. Furthermore, that emails to the applicant included information advising the appellant that the allowance in the extant local plan had already been exceeded at the time of the application. Moreover, the Council say that they were acting in a proactive and positive manner as set out in the National Planning Policy Framework by preparing negotiations in respect of the emerging local plan that might have, if it had been deemed sound, contained relevant policies in respect of a residential development.

5. I note the evidence submitted by both parties regarding the pre-application procedure, the relative timelines and the consideration of both the extant and emerging local plans, and that the appellant made some revisions based upon pre-application discussions with the Council, including a reduction in the number of dwellings on site, the height of the ridge line and the proposal for detached rather than terraced housing. However, these were activities that in the main occurred prior to the appeal being submitted. The PPG is clear in that the primary focus of the costs regime in planning appeals is centred on unreasonable behaviour occurring during the appeals process, and while an appeal decision sits separately from this cost decision, it has been demonstrated in this case that there were issues identified at the pre-application stage that still had not been resolved; such as the scale and siting of the proposal and the street-facing gable ends.

6. Therefore, whilst the degree of focus of the Council appears to have been lacklustre at times, there were sound planning reasons for the proposal to have been refused. I acknowledge the applicant's unhappiness with the Council's timeliness in dealing with the issues arising from the pre-application process, including the reduced 'windfall' allowance. However, there were wider issues that still needed to be addressed, including harm to the heritage asset. Therefore, it is likely that a planning appeal could not have been avoided.

7. Nonetheless, I don't doubt that both parties were seeking to find an acceptable resolution, including reference to the relevant local plan. Therefore, as the Council were carrying out the normal activities associated with a planning application, I cannot agree that the Council has acted unreasonably in this respect. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

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

J E JOLLY

INSPECTOR