The Planning Inspectorate

Costs Decision

Hearing Held on 24 November 2020

Site visit made on 25 November 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3255591 Allspheres Farm, Upper Minety, Hankerton, Wiltshire SN16 9LH

- 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 Klaudia Meeres for a full award of costs against Wiltshire Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the enlargement of a farm dwelling by adding a first floor.

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. The applicant considers that the Council behaved unreasonably in applying a 150sqm floorspace measure as a maximum allowance when it has no basis in policy and is not rigorously applied in relation to recent similar proposals. She further considers that the Council's case shifted to include concerns that the dwelling would be vulnerable to the removal of occupancy restrictions. Additionally, she contends that the Council did not put forward any evidence that a planning harm would result. Finally, during the planning application the Council did not permit the applicant to respond to questions raised by their Agricultural Consultant.

4. The PPG gives examples of unreasonable behaviour where local planning authorities are at risk of an award of costs. This includes the following:
   - Failure to produce evidence to substantiate each reason for refusal on appeal.
   - If they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
   - Not determining similar cases in a consistent manner.
   - 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. In addition to the case officer's report, the Council provided a comprehensive statement of case that outlined their concerns and referred to the reason for refusal on the decision notice and relevant policies for the determination of the proposal. Furthermore, a statement was provided by the Council's agricultural advisor who also spoke at the hearing. The case officer report refers to the issue of affordability for potential future rural workers and referenced an appeal decision. The point is reiterated in the conclusion of the Council's appeal statement. Whilst I acknowledge that the applicant disagrees with the substance and balance of the Council's case, the evidence does not show that they changed their argument. In combination these factors indicate that, overall, the Council has not failed to substantiate the single reason for refusal.

6. The applicant identifies three statements[1] in the Council's appeal statement which she considers to be vague, inaccurate or unsubstantiated. Furthermore, and connected to the second statement identified, she contends that the Council makes assertions regarding affordability that are vague and unsupported by valuation evidence.

7. The statements relating to the needs of the holding and office and utility room are clearly articulated and are connected to explaining the Council's approach to considering the appropriate amount of floorspace for a rural workers dwelling. As they underpin how the Council arrived at its planning judgement on the main issue in this case, they go to the merits of the proposal rather than purporting to be absolute statements of fact. Essentially, the applicant disagrees with the weight that should be attributed to the circumstances of the case, and the respective judgements exercised. It follows that it is appropriate to test those matters by appeal. Accordingly, I do not find these two extracts provided from the Council's statement amount to evidence of unreasonable behaviour.

8. However, in relation to the issue of affordability, the Council asserted that harm would arise from the proposal as it would be less affordable to future rural workers which, in turn could undermine the maintenance of the agricultural tie in perpetuity. Other than a generalised reference to larger dwellings being more valuable, no specific or other valuation evidence was provided to substantiate their position in relation to the proposed development and ramifications for future rural workers. Therefore, in relation to this aspect of their case, the Council did act unreasonably.

9. Even so, it must also be shown that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The evidence before me does not show this was the case for the following reasons. Firstly, the issue of affordability was not the entirety of the Council's case and therefore, even had the Council acted otherwise in this regard, it is unlikely that the appeal would have been avoided altogether. Neither am I persuaded that the applicant has identified wasted expense over and above normal appeal costs as a direct consequence of this aspect of the Council's behaviour, for example, by commissioning valuation work.

[1] Paragraph 4.1 Claim for Costs dated 2 November 2020

10. Both parties provided examples of decisions made by the Council where the proposal concerned a rural workers dwelling to illustrate how the 150sqm floorspace guideline had been applied in other cases. It will be seen from my decision that, given the differences with the appeal proposal, I drew broad findings from the spectrum of development in the evidence provided. No individual development was so similar to the appeal proposal that it demonstrates the Council have acted unreasonably in not determining similar cases in a consistent manner.

11. In his report dated 17 March 2020, the Council's agricultural advisor raised three questions regarding the provision of office and welfare facilities at the farm. He stated that as the application failed to address his points this fundamentally compromised the justification for the office and utility area within the proposed development. Clearly the Council considered these points to be important as they quoted them in the case officer report. The Council state that they provided a copy of their agricultural consultant's report to the applicant on 19th March 2020 which gave her an opportunity to comment prior to issuing their decision on 20th March 2020. However, the time between sharing the report and the final decision was less than 24 hours and therefore, did not realistically allow sufficient time for a considered response.

12. It would have been helpful if the Council had allowed the applicant a reasonable opportunity to provide a response to the questions raised. Nevertheless, the Council did not consider that the office and utility room should be excluded from the 150sqm floorspace measure, as in their view, it could not be guaranteed to be used for such purposes. Moreover, even if it were discounted, the floorspace would still have exceeded the guideline. This would have been the case irrespective of the receipt of further responses to the questions raised and is reinforced by the Council's statement of case which did consider responses to those questions. Therefore, I am not persuaded that even if the Council had been able to consider the applicant's responses earlier, that this would have led to a different outcome thereby avoiding the appeal or a reduction in the associated volume of preparation work. Accordingly, the Council's behaviour in this regard falls short of amounting to unreasonable behaviour within the meaning of the PPG.

Conclusion

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

Helen O'Connor

Inspector