



Costs Decision

Hearing Held on 10 November 2020

Site visit made on 12 November 2020

by G Rollings BA (Hons) MAUD MRTPI

An Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4th January 2021

Costs application in relation to Appeal Refs: APP/H1840/W/19/3244074 and APP/H1840/W/20/3257218

Land to the Rear of Barlwych Cottage, Hill Furze, Fladbury, Worcestershire, WR10 2NB

- 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 Rob Newman for a partial award of costs against Wychavon District Council.
 - The hearing was in connection with appeals against the refusal of planning permission for conversion of existing former transport haulage buildings into 1 No. 2 bedroom dwelling and 2 No. 3 bedroom dwellings and the erection of a new self-build live/work unit together with ancillary works (Appeal ref: APP/H1840/W/19/3244074), and conversion of existing former transport haulage buildings into 1 No. 2 bedroom dwelling and 2 No. 3 bedroom dwellings, new garages and ancillary works (Appeal ref: APP/H1840/W/20/3257218).
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Decision

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

The submissions for Mr Newman

2. The submission was made in writing by letter dated 6 November 2020, prior to the Hearing. A rebuttal of the Council's submission was made in writing on 18 November 2020.

The response by Wychavon District Council

3. The Council's rebuttal was submitted in writing on 16 November 2020, after the Hearing was closed.

Reasons

4. 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.¹
5. The application seeks to recover the costs incurred as a result of an alleged delay by the Council in agreeing to a statement of common ground (SOCG) prior to the Hearing. Additionally it was suggested that the delays were due in part due to the Council's reluctance to accept the findings of the Inspector in

¹ PPG reference ID: 16-028-20140306; revision date: 06 03 2014.

the Droitwich Appeal², and concerns were also raised regarding the Council's acceptance of the appellant's marketing information.

Self-build matters

6. There were 11 versions of the SOCG produced between December 2019 and the Hearing, although the first draft related to only the earlier of the appeals. The linking of the appeals was a complicating factor. The appeals procedural guide³ requires the SOCG to be agreed at the five-week stage of the appeal, at the same time as the submission of the local planning authority's statement of case.
7. It is clear that the Council's consideration of the self-build issue, in response to the Droitwich Appeal, was problematic and time-consuming. Nonetheless there was a period between December 2019, when the applicant submitted the first draft, and the issue of the Droitwich Appeal Decision, when no work was undertaken on the draft SOCG by the Council. A finalised SOCG for the first appeal should have been submitted with the Council's submission of its statement on the first appeal in March 2020.
8. However, there are other considerations that I must take into account. Firstly, there was significant disruption to public services from February onward as a result of the Covid-19 pandemic. Secondly, further revisions of the SOCG occurred following the Droitwich decision, a factor which resulted in the redrafting of the SOCG. No hearing date had been set by this time and given that this decision was a material consideration, it would be unreasonable to deny a revision to the SOCG. I therefore consider that the Council's behaviour in regard to the first appeal was not unreasonable when considered retrospectively, and in any case did not result in expense which could be considered "wasted" on the behalf of the applicant.
9. The Council's statement on the second appeal was submitted to the Inspectorate on 22 September 2020, when the SOCG dealing with this appeal should have also been submitted, in accordance with the procedural guide schedule. A joint SOCG dealing with the linked appeals would have also been acceptable at this point. However, the Council's timeline indicates that updated drafts continued to be exchanged from June through to the Hearing in November as a result of the ongoing negotiation between the parties over the issue of the self-build housing.
10. The failure of the Council to submit an SOCG to the required schedule would normally be considered unreasonable in the absence of extenuating circumstances. However, consistent negotiations continued to occur over an extended period in an effort to enable the parties to reach an accord. The various SOCG drafts provided to me did not suggest that the Council was being obstructive or unreasonable within the negotiating process. As such, considering the totality of the matter, I am not persuaded that the Council's behaviour was unreasonable.

Marketing matters

11. There is no evidence before me to suggest that the Council acted inconsistently in its approach to its marketing requirements. The requirements of the

² Appeal Ref: APP/H1840/W/19/3241879; Decision date: 23 July 2020.

³ *Procedural Guide, Planning appeals – England*, The Planning Inspectorate, November 2020 (most recent version).

relevant parts of the local plan are clear in this regard, and I have no information to suggest that the Council deviated in its requirements, or applied the plan inconsistently in regard to the two appeals. The relevant reasons for refusal are clear and I do not consider that the Council acted unreasonably.

Conclusion

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

G Rollings

INSPECTOR