The Planning Inspectorate

Costs Decision

Hearing held on 17, 18 and 19 November 2020 and on 14 January 2021

Site visits made on 8 and 28 December 2020

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Costs application in relation to Appeal Ref: APP/Q3115/W/20/3248877
Greendene Farm, Chazey Heath, Mapledurham, Reading RG4 7UG

- 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 South Oxfordshire District Council for a partial award of costs against Hamberley Development Limited and Mapledurham Estate.
- The hearing was in connection with an appeal against the refusal of planning permission for the demolition of the buildings at Greendene Farm other than Greendene Farmhouse and the development of a 65-bedroom elderly care home use class C2 with access, car-parking and a comprehensive landscaping strategy.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The written submissions for South Oxfordshire District Council

2. The Local Planning Authority (LPA) applies for a partial award of costs, in respect of the extra costs occasioned by the late production of the appellant's revised 'alternative sites assessment' (ASA).

3. The aim of the costs regime, insofar as relevant, is to: "encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case."[1]

4. An example of unreasonable behaviour by an appellants giving rise to an award of costs is: "introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen."[2]

5. The appellants' conduct in this case is a paradigm example of such behaviour. The appellants in this case advanced an argument from the outset based on the need for the proposed development, and the difficulty of meeting that need "outside the designated area", i.e. The AONB (National Planning Policy Framework paragraph 172). It choses to base that argument on a 'market catchment area'. It submitted needs calculations by reference to that area, but did not offer any substantive evidence as to the ability to meet that need in parts of the market catchment area falling outside the AONB.

[1] Planning Practice Guidance paragraph: 028 Reference ID: 16-028-20140306 Revision date: 06 03 2014
[2] Planning Practice Guidance Paragraph: 047 Reference ID: 16-047-20140306 Revision date: 06 03 2014

6. The appellants was clearly aware that this amounted to a flaw in its case, as it had the ASA (dated October 2020) prepared. Rather than share the ASA in advance of the hearing with the LPA and the Inspector, the appellants chose to attempt to run its case without the ASA. Representatives of the appellants simply stated that there were no available alternative sites in Reading. When it was pointed out by the LPA in discussion that this was an assertion, the appellants then sought to admit the ASA. This was unreasonable.

7. A reasonable approach would have been either to make the appellants' case without the ASA (as the appellants first sought to do) or if seeking to rely on the ASA (as the appellants later sought to do), to share this with the LPA in advance so that the LPA would or might have been in a position to deal with this new evidence at the hearing. The appellants could not reasonably expect the LPA and Inspector to accept its assertions about the availability of sites in Reading without any question.

8. The explanation for its conduct proffered by the appellants, namely that there is no provision in the procedure rules for the admission of new material, is feeble. New documents frequently are submitted either by agreement or otherwise, as indeed the appellants did in this very case. Furthermore, the position in the rules did not stop the appellants from seeking to rely on the ASA. Having commissioned the ASA the appellants must or should have considered in advance whether it might want to rely on it; if so it should have been shared with the LPA pursuant to the requirements of "good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case" (see above).

9. The appellants appears to have accepted that it behaved unreasonably, as (in response to an expression of concern about its conduct from the Inspector) it offered an apology to her and to the LPA.

10. It is rare to find such a clear case of unreasonable behaviour.

11. As the ASA was presented at a late stage, it was not possible for the LPA to make any meaningful comments on it within the framework of the originally scheduled hearing. This was accepted by the appellants.

12. It was then necessary for further arrangements to be made to deal with the ASA. The Inspector concluded that the appropriate way to do this was by way of a further day of the hearing to consider the ASA and closing submissions. It is important to stress that the LPA did not insist on a further hearing day, as the writer made clear in the discussion about how to take matters forward. The consequence thus flowed naturally from the appellants' conduct and will result directly in extra expense for the LPA both in terms of attendance and the duplication of elements of preparation.

The response from Hamberley Development Limited and Mapledurham Estate

13. The appellants did not wish to submit a reply.

Reasons

14. 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. Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include, among others, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

15. There is no doubt that the submission of the evidence in relation to the ASA was unreasonable behaviour. It was presented at a very late stage, indeed during the Hearing itself, following my questions on the matter of need and alternative sites. It was a new, fresh piece of evidence, and substantial in its size amounting to 64 pages in total. This required scrutiny by the LPA and myself, which could not have been done within the timescales of the original Hearing.

16. In terms of wasted expense, the submission of the ASA resulted in an adjournment of the Hearing to enable an additional day of sitting. It also resulted in additional preparatory work that would not have otherwise arisen.

17. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial award of costs is justified.

Costs Order

18. 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 Hamberley Development Limited and Mapledurham Estate shall pay to South Oxfordshire District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of additional evidence in response to the late evidence and the additional sitting day; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to Hamberley Development Limited and Mapledurham Estate, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Katie McDonald

INSPECTOR