The Planning Inspectorate

Costs Decision

Hearing Held on 11 March 2021

Site visit made on 12 March 2021

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Costs application in relation to Appeal Ref: APP/J0405/W/20/3257815
Woodside Farm, Chivery, Aston Clinton HP23 6LD

- 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 S Brown and Mrs S Cadman for a full award of costs against Buckinghamshire Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the stationing of a log cabin for use as a permanent rural workers dwelling.

Decision

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

The submissions for Mr S Brown and Mrs S Cadman

2. The local planning authority (LPA) failed to meet the appeal timetable in respect of the timescales for submission of its Statement and the Statement of Common Ground (SoCG). In respect of the SoCG this allowed the applicant 24 hours to consider the LPA's suggested amendments. This meant there was little opportunity to look at areas of disagreement, and while an agreed position was reached on some matters one was not clearly reached on some issues such as essential need, resulting in discussion of this matter at the hearing.

3. The LPA failed to properly take into account evidence submitted on behalf of the applicant during the application and appeal process. In particular, the LPA incorrectly applied Green Belt policy in respect of the staged approach to inappropriateness, which was unreasonable. The LPA also claimed that no case for very special circumstances had been put forward, yet this was referenced in the applicant's submissions.

4. The LPA commissioned an agricultural consultant Acorus to comment on the application. The Acorus response was dated July 2019 but despite contacting the LPA on several occasions, the applicants were first made aware of that response in December 2019 when it was published on the LPA's website. In response, the applicants provided a 'Further Supporting Comments' (FSC) report in January 2020, however it was not clear from the planning decision or officer report whether this was taken into account when the LPA made its decision. The LPA subsequently failed to respond to correspondence on this matter. It was only when the LPA requested an extension of time to submit their appeal Statement because they were awaiting comments from Acorus, and that Statement was received, that the applicants had Acorus' opinion on the evidence in the FSC report. This was despite the appeal having been

submitted in August 2020. This leads the applicants to assume that Acorus' subsequent comments submitted as part of the LPA's statement serve the purpose of supporting the LPA's refusal rather than being an objective consideration of the merits of the proposal.

The response by Buckinghamshire Council

5. The extensions of time for the LPA's appeal Statement and SoCG were agreed by the Inspectorate. Whilst the short turnaround for the SoCG was regrettable this was due to resource challenges for the LPA, which worked proactively to get the matter resolved.

6. With regard to Green Belt policy, the LPA considers that no substantive case was put forward with respect to very special circumstances which the LPA could agree with.

7. The LPA acknowledges there were delays in responding to the applicants during the application process, and that some correspondence may have gone unanswered, however this was not unreasonableness, but a reflection of the resource challenges faced by the LPA. The LPA acted rationally by instructing Acorus to undertake an independent agricultural assessment and therefore Acorus were not prejudiced in the comments it made.

8. There was no obligation to share Acorus' comments with the applicants other than to provide a summary of the conclusions. The Acorus report was therefore initially marked 'sensitive' on the LPA's files and not publicised. The LPA's records suggest that Acorus were not reconsulted following submission of the FSC, however it is the LPA's belief that it was considered by the case officer when determining the application. Acorus has reviewed that report as part of the appeal process and advised that the information contained in it does not alter the conclusions reached at application stage. The LPA does not therefore believe it has acted unreasonably or caused another party to incur wasted expense in the appeal process.

Reasons

9. The Planning Practice Guidance 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.

Submission of documents

10. The LPA's Statement and the SoCG were submitted after the timescales set out in the Hearing Rules[1], however in both respects I had agreed longer deadlines. The LPA had requested further time to provide its Statement to allow for input from its agricultural consultant Acorus which was denied due to the imminent hearing date. Nevertheless, it provided a full statement, including Acorus' input, by the earlier date specified. This gave 3 working days between submission of the LPA's Statement and the revised deadline for the SoCG. A relatively detailed SoCG, signed by both parties, was submitted just over a week before the hearing.

11. The final SoCG was considerably different to the original draft, which indicates to me that the applicants and the LPA worked together proactively to find areas

[1] The Town and Country Planning (Hearings Procedures) (England) Rules 2000

of agreement. The parties were also able to address points raised in my pre-hearing note with regard to the description of development and consequent impacts on the drafting of conditions. Consequently, the SoCG identified numerous areas of agreement and included a list of agreed conditions. This saved time at the hearing as most of those matters only needed to be addressed briefly, and the conditions discussion was largely confined to matters of detailed wording.

12. The agreed position in respect of essential need was however not clear from the wording in the SoCG, therefore some discussion on this was required at the hearing. The parties were however able to clarify their respective positions and narrow down the areas of difference fairly quickly. In any event, as essential need formed a key part of the applicants' case, I would have needed to ask questions about this matter in order to make my decision. Therefore, the time spent discussing essential need at the hearing was necessary and was no longer than it needed to be.

13. Accordingly, there was no unreasonable behaviour in respect of the LPA's submission of documents. It co-operated with the applicants during the appeal process to enable the hearing to be focused on areas of dispute, and there is no evidence of unnecessary or wasted expense being incurred as a result.

Whether inappropriate development

14. The LPA and the applicants agreed that the proposal was inappropriate development in the Green Belt, but for different reasons. I have taken a different view to the LPA on this matter, but nevertheless the LPA explained and substantiated its approach. The applicants' position was also clearly expressed. Therefore, the difference between the main parties was clear to me before the hearing and the matter was dealt with quickly at the event. As such I find no unreasonable behaviour or that any wasted expense was incurred in this respect.

15. The LPA's submissions in respect of the applicants' case for 'very special circumstances' (VSC) were somewhat confusing, particularly as the applicant's case in this respect was clearly stated. However, reading the LPA's appeal statement as a whole I consider that it applied the correct test from the National Planning Policy Framework (the Framework) when considering whether VSC existed. At the hearing both parties succinctly set out their position on the balancing exercise in Framework paragraph 144 and whether they considered that VSC existed. Consequently, little time was spent on this matter. Therefore, while the LPA's case in this respect could have been more clearly articulated, I do not find that it incorrectly applied Green Belt policy. I therefore find no unreasonable behaviour in this regard, or that any unnecessary or wasted expense was incurred in dealing with this matter.

Agricultural consultants

16. It was reasonable for the LPA to engage professional advice on the detailed agricultural and financial information submitted by the applicants at the application stage. There is no compelling evidence before me to indicate that Acorus' comments on the application or the appeal were anything other than an objective and independent analysis of the information before it. Indeed, at the hearing Acorus' representative took a slightly different view to the LPA's agreed position in the SoCG on some matters.

17. The LPA acknowledges the delays and difficulties in communication during the application process. It did provide Acorus' comments in sufficient time for the applicants to respond before a decision was made. However, while the LPA suggests that it believes the FSC report was taken into account when it reached its decision, it is not mentioned in the officer report. Moreover, the LPA acknowledges that it did not reconsult Acorus on that further information. It is not therefore clear whether the LPA's decision was made based on a full assessment of the information before it.

18. Nonetheless, the LPA's appeal statement and its submissions at the hearing took into account the FSC report and the subsequent updates from the applicants' own agricultural consultant, including late submissions a few days before the hearing. The LPA reviewed its case following the submission of this further information and decided that it did not change its overall conclusion on the proposal. The information submitted by the applicants did however enable the parties to reach agreement on some issues, such as the dwelling needing to be within sight and sound of the livestock. While I have reached a different conclusion to the LPA on some aspects of essential need, it provided a reasoned justification for each matter where it disagreed with the applicants.

19. Consequently, while there were clearly some difficulties during the application process, the LPA took account of all the applicants' submissions during the appeal and substantiated its case in its Statement and at the hearing. Therefore, I find no unreasonable behaviour during the appeal process as a result of its behaviour or actions at application stage. Moreover, even if the LPA had explicitly had regard to the FSC report and had sought further comments from Acorus when making its decision on the application, the evidence before me indicates that it would still have refused permission. Therefore, an appeal may still have been lodged. Accordingly, I find no wasted or unnecessary expense was incurred in respect of the appeal proceedings due to the failure to re-consult Acorus and the uncertainty around whether the FSC report was considered at the application stage.

Conclusion

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

L McKay

INSPECTOR