The Planning Inspectorate

Costs Decision

Hearing Held on 22 June 2021

Site visit made on 23 June 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26th July 2021

Costs application in relation to Appeal A: APP/R0335/C/20/3245838 & Appeal B: APP/R0335/C/20/3245839
Cedar Barn, Winkfield Lane, Winkfield

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Bracknell Forest Borough Council for a partial award of costs against Mark Hayden-Kellard and Linda Hayden-Kellard.
- The hearing was in connection with an appeal against an enforcement notice alleging the erection of a self-contained unit of residential accommodation.

Decision

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

The submissions for the Council

2. The Council's case is that the document submitted by the Respondents on 10 June 2021 contained submissions and evidence which had not been part of the Appellant's case previously and which should properly have been part of a separate appeal relating to planning application 21/00021/FUL. In particular, the Council raised issue with the information included about whether very special circumstances existed, the Unilateral Undertaking and the more detailed arguments regarding whether the development constitutes limited infilling in a village.

The response by Mark and Linda Hayden-Kellard

3. The respondents' submitted that an update regarding the other planning applications on the wider site was necessary to provide the parties views to be considered during this appeal. Part of their response was to the Council's views as expressed in the delegated report refusing to grant planning permission 21/00021/FUL at the beginning of May. The respondents had also hoped that the stables application would have been determined before the hearing date but the update report was submitted after it became clear from conversations with the Council that this would not happen. The Council were not required to provide a response in writing, they could have done it verbally at the hearing. In any event, the respondents submitted that the written updates were helpful and assisted in reducing hearing time and it was not unreasonable to provide the updates regarding the planning applications. It would not have been a surprise to the Council that the arguments about whether very special circumstances existed were raised as they were referred to in the enforcement notice and dealt with by them in their delegated report. The Unilateral

Undertaking had been likewise flagged in as part of the planning application recently refused.

4. In addition, the respondents struggled to see what the wasted expense could have been to the Council in light that there was no delay to the hearing and it would have made no difference if the update note had in fact been provided earlier.

Reasons

5. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs can only 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.

6. In my Pre-Hearing Note I had requested an update regarding various issues including the planning applications for the wider site and whether the development is located within a village. The hearing agenda that I also sent highlighted that the main issues that would need to be considered in relation to the ground (a) appeal were issues regarding development in the Green Belt which clearly includes discussion regarding other considerations and whether they amount to very special circumstances. These issues fall to be considered in order to ensure that national policy is correctly applied.

7. There was a period of 8 months between the Final Comments and the appeal, and there were three separate planning applications in relation to the development and the wider site. The information provided in the update note was relevant to the determination of the appeal and I would have requested it verbally during the hearing if I had not had it in advance. I made a decision to allow the completed unilateral undertaking to be submitted at the beginning of the hearing, again because of its relevance to assist me in making the determination on proper policy grounds. In light of the relevance of the information submitted, and the fact that hearing was not delayed as a result, I do not find that it was unreasonable to submit the update note.

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

Zoë Franks

INSPECTOR