The Planning Inspectorate

Costs Decision

Hearing Held on 12 October 2021

Site visit made on 12 October 2021

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Costs application in relation to Appeal Ref: APP/Q3305/W/21/3270276
Springwater Farm, Anchor Road, Coleford, Frome, BA3 5GX

- 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 Aaron Foot for a full award of costs against Mendip District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for erection of a single detached residential dwelling, garage and associated development.

Decision

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

The submissions

2. The appellant's case was made in writing. The Council's response was also made in writing and the appellant submitted further comments in writing ahead of the hearing. Some further discussion occurred orally during the hearing. Details of the oral submissions are set out in the Annex at the end of this Decision.

Reasons

3. 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. The PPG also states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, the PPG specifies that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

4. The PPG indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

5. The appellant considers that the Council acted unreasonably and the entire appeal would have been unnecessary had this not been the case. The appellant

states that the Council's Reasons for Refusal were based on factually incorrect and unsubstantiated assumptions. For example, The Council referenced anecdotal evidence from an officer which suggested that at the time they visited the site no cattle were present. The Council also appeared to misinterpret the workings of the farm in respect of whether or not calving occurred on site and made reference to a spring which crosses the site having been made into a waterfall feature which appeared domestic in nature.

6. I acknowledge that these elements of the Council's case appear not to be supported by any compelling evidence and, indeed, were not returned to or later amended or withdrawn. I accept the frustration this must have caused the appellant. However, it seems to me that these observations formed only a part of the Council's assessment and, even if the elements of the Council's case which were unsubstantiated had not been referenced, the fundamental concerns expressed would have remained thus leading to a refusal to grant planning permission.

7. Whilst I understand the difficulties these misunderstandings caused the appellant, in my view evidence to substantiate the broader reasons for refusal was provided and was supported by objective analysis. Accordingly, I do not consider that the appeal could have been avoided altogether.

8. I acknowledge that, at appeal stage, the appellant took time to refute the areas of the Council's case they considered misleading or irrelevant. However, in my view, this represented only a small element of the appellant's case and is not such so as to amount to tangible unnecessary or wasted expense. Moreover, a number of these issues, such as whether or not cattle were present on site and the details of the livestock operation on site would have been explored as part of the appeal and at the site visit irrespective of the Council's view.

9. The appellant's Costs claim also states that the Council imposed additional requirements beyond the scope of local and national policy, particularly with respect to the appellant's consideration of alternative accommodation. Whether or not a proposal would accord with the adopted development plan policy, is a matter of planning judgement. Though the parties have interpreted the policies differently, the Council have clearly set out their views on this matter reaching a judgement in the way they are entitled to.

10. The appellant considers that there were delays and additional costs involved in preparing and agreeing the statement of common ground (SOCG). Initially in the Council's unwillingness to co-operate and later in their failure to take proactive steps to reach agreement.

11. The appellant particularly raises concerns around the Council's interpretation of whether or not the financial requirements of Policy DP13 of the Mendip District Local Plan 2006 – 2029 Part 1: Strategy and Policies, adopted on 15th December 2014 (LP) had been met in this instance. The Council Officer's report originally concluded that the application complied with the financial tests set out in Policy DP13. However, the Council appeared to change their position on this matter during the course of the appeal; initially expressing doubts but later agreeing that the financial test had indeed been met.

12. Though I appreciate the delay and uncertainty that this created for the appellant I do not consider that this resulted in any unnecessary or wasted expense. The SOCG was ultimately agreed and signed just prior to the Hearing

and, as part of my consideration of the proposal at appeal stage, It was necessary to explore the financial position of the enterprise and evidence in this regard would have been required in any event.

13. I note the appellant's concerns that the Council acted in an unfair and biased manner at application stage. However, the evidence before me suggests that the Council assessed the application having regard to the development plan and all other material considerations and I do not have cause to conclude that any unfair bias or prejudice occurred.

Conclusion

14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

L J O'Brien

INSPECTOR

Annex: Additional submissions made orally at the Hearing

Appellant

15. In the handling of the case the appellant was treated differently to others and unfairly. The Council came to a decision and then justified it. The process was full of delays and misconceptions and was not impartial or fair. There was delay and additional costs involved in preparing and agreeing the statement of common ground (SOCG). Initially in the Council's unwillingness to co-operate and later in their failure to take proactive steps to reach agreement following submission of the draft SOCG approximately two months ago. The Council were reluctant to agree that the application had passed the financial test of Policy DP13 despite their previous reports concluding that the test was satisfied.

Council

16. When the appeal was lodged the SOCG was submitted in PDF form. The Council thought the appeal would proceed via written representations and thought they could discuss the SOCG at a later date. The Council Officer then left the Council. The new Council Officer contacted the appellant and started with a fresh version of the SOCG which has now been agreed. The Council acted in good faith. The financial viability issue was due to the Council taking the evidence at face value at the time, however, on further reflection the Council agreed that the financial test had been met.

Appellant

17. Notwithstanding the current agreement, the Officer's Report previously agreed that the test had been met and the Council had the full information before them.