

Costs Decision

Hearing held on 30 November 2021 and 1 March 2022

Site visit made on 1 March 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

Costs application in relation to Appeal Ref: APP/M0655/W/21/3276261 Higher Oak Farm, Higher Lane, Lymm, Warrington WA13 0RG

- 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 K Robertson for a full award of costs against Warrington Borough Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for a farm manager's dwelling (permanent).
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Decision

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

The submissions for Mr K Robertson

Substantive grounds – in relation to the merits of the case

2. The need for a temporary agricultural workers dwelling was accepted on appeal¹ in June 2019. This established the essential need for a dwelling to serve the rural enterprise and outweighed the harm to the Green Belt. Since then, the rural enterprise has demonstrably grown in line with projections set out during the case for the temporary dwelling.
3. The application was made in outline form with scale clearly stated as a reserved matter. This matter was not called in by the Council in accordance with the relevant procedure². Nevertheless, late in the determination period, an indicative scale and parameters plan was requested by the Council to assist its assessment of the proposal. In doing so, the Council has placed an over reliance on an assessment based on indicative plans. Furthermore, the Council has no policy basis upon which to reach a view on an appropriate size for an agricultural worker's dwelling.
4. The Council's view is that a dwelling of any realistic scale would be harmful to the Green Belt and so could not be supported. However, the Council have failed to conduct a proper Green Belt balancing exercise to consider whether the essential need for a rural worker's dwelling and any other considerations would amount to the very special circumstances necessary to justify the proposal. No specialist advice was sought to justify the Council's position. The refusal of planning permission is considered to be ill-founded and amounts to

¹ Appeal Ref. APP/M0655/W/18/3209412

² Part 3 5(2) of The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)

unreasonable behaviour by preventing development which should clearly have been permitted and therefore has resulted in wasted expense via the submission of an appeal.

Procedural grounds – relating to the appeal process

5. In relation to the hearing of 30 November 2021, the Council failed to provide adequate notice of the hearing to interested third parties, resulting in an adjournment to allow the correct notifications to be served. This procedural failure on behalf of the Council amounts to unreasonable behaviour that has resulted in unnecessary delay and wasted expense for the appellant.

The response by Warrington Borough Council

Substantive grounds

6. The Council did not seek to introduce scale as a matter at the outline stage but there was a need to consider indicative parameters to make a meaningful assessment of the proposal's impact on the openness of the Green Belt. At point 12 of the Statement of Common Ground it was agreed that there was a need to consider all of the issues afresh. It was clear from the previous appeal decision that the consent for a temporary dwelling did not set a precedent for a permanent dwelling at the site.
7. It was reasonable for the Council to make an assessment as to whether the proposal amounted to the very special circumstances necessary to outweigh the harm to the Green Belt and this is clearly set out in the Council's delegated officer report. Accordingly, it is clear on what basis the Council refused planning permission and the assessment includes reference to the appellant's supporting information. The Council contest that there has been any unreasonable behaviour on substantive grounds.

Procedural grounds

8. The Council acknowledges its failure to give proper notice of the 30 November 2021 appeal hearing. It accepts that this amounts to unreasonable behaviour.

The response for Mr K Robertson

9. When considering the principal of development, there has been an over reliance on the indicative scale parameters plan. If the Council was concerned with scale, it could have addressed this via a planning condition.
10. The Council has shown a complete disregard to the previous appeal decision which only required viability to be proven. Instead, the Council has chosen to ignore this and simply state that no dwelling would be acceptable on the site. This is unreasonable behaviour, and an award of cost should be made.

Reasons

11. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, 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.
12. Turning first to the substantive grounds, the previous appeal decision does not set a precedent for a permanent dwelling at the appeal site, this is made clear

by the previous Inspector at paragraph 37 of his decision. Indeed, the Inspector is clear that each application must be considered on its own merits and that any future proposals would be required to demonstrate that very special circumstances exist to warrant the approval of inappropriate development in the Green Belt. I concur with this view.

13. It was clear from the discussion at the hearing that the Council had found it difficult to assess the likely effects of the proposal on the openness of the Green Belt in the absence of any details in relation to scale. While it requested further details to assist its assessment in this regard, it is clear from the commentary in its officer report and subsequent Statement of Case that it did not consider scale as a matter for determination at this outline stage. Ultimately, the Council reached the view that a permanent dwelling of any scale would be harmful to the openness of the Green Belt. Indeed, it can be seen from my decision that I agree with the Council's assessment in this regard.
14. The Council's Green Belt balancing exercise is set out in paragraphs 9.44 to 9.48 of its officer report with an overall conclusion set out at paragraphs 10.1 to 10.6. Unlike the Council, I have found that the essential need for a dwelling to accommodate a rural worker does amount to the very special circumstances necessary to justify the proposal. However, the balance of material considerations in a planning decision, and the weight to be attributed to differing material considerations, is always a matter for the decision-maker and often involves a degree of subjectivity. I can see that the Council did consider the essential need for a rural worker's dwelling to be located at the site, but that, in its view, this did not overcome the harm to the Green Belt.
15. Moreover, the appeal process offers a route by which legitimate differences of opinion on these matters can be independently scrutinised. Essentially, while the applicant may not agree with the Council's conclusions in these respects, this does not mean that the Council acted unreasonably in its assessment of the appeal proposal, or in reaching its conclusion. I am satisfied that the Council has provided clear reasons for withholding consent and therefore it was not a forgone conclusion that the development ought to have been permitted. Therefore, unreasonable behaviour on substantive grounds has not been demonstrated.
16. With regard to the procedural grounds, the PPG advises that parties are expected to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the appeal process.
17. The hearing was initially opened on 30 November 2021. However, early in the proceedings it became apparent that the formal notifications of the hearing had not been served in accordance with the statutory timescales set out in the regulations³. Accordingly, I was of the view that if the hearing were to proceed there would have been a sufficient risk that the interests of a third party would be prejudiced by a lack of proper notification. This would have placed any decision, whether allowed or dismissed, at risk of a justified complaint or a likely successful legal challenge on the basis of procedural unfairness. The hearing was therefore adjourned to allow the notifications to be served in

³ The Town and Country Planning (Hearings Procedure)(England) Rules 2000 and the Procedural Guide: Planning Appeal England (updated 21 October 2021)

accordance with the regulations⁴. The hearing was reconvened on 1 March 2022.

18. I am in no doubt that the Council's actions in this regard amounts to unreasonable behaviour, with this directly resulting in an unnecessary delay to the appeal proceeding. The applicant and their agent will have taken time out of their schedules to prepare for and attend the initial hearing date. This will have incurred a cost. The applicant has, therefore, incurred unnecessary and wasted expense due to this delay and therefore a partial award of costs is justified.

Conclusion

19. I have found that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to a procedural matter. I therefore conclude that a partial award of costs, to recover the expense incurred by the applicant in relation to the adjournment of the appeal hearing on 30 November 2021, is justified.

Costs Order

20. 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 Warrington Borough Council shall pay to Mr K Robertson, the cost of the of the appeal proceedings described in the heading of this decision, but limited to those costs incurred due to the delay in the hearing proceedings that resulted from an adjournment of the hearing on 30 November 2021; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to Warrington Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J M Tweddle

INSPECTOR

⁴ Ibid.