The Planning Inspectorate

Costs Decision

Hearing (Virtual) held on 13 April 2022

Site visit made on 14 April 2022

by Martin Small BA (Hons) BPl DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Costs application in relation to Appeal Ref: APP/Z1510/W/21/3278776
Land at Bardfield Road, Shalford, Braintree, CM7 5HX

- 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 Braintree District Council for a partial or full award of costs against Mr Daniel Power.
- The Hearing was in connection with an appeal against the refusal of planning permission for change of use for the siting of a temporary dwelling, together with stables, agricultural building & associated hardstanding & turn out/exercise area to support a new equestrian business.

Decision

1. The application for a partial or full award of costs is refused.

The submissions for Braintree District Council

2. The Council's application was made orally at the Hearing.

3. The Council claimed that whilst it is usual for appellants to substantiate their case at appeal, there is a reasonable expectation that information that would be at the heart of an application would be submitted with the application. It should have been clear to the appellant that the profit / loss account had not been submitted with the application as that was submitted via the planning portal, which lists the documents submitted.

4. It was not the responsibility of the Council to request information that the appellant would have been aware was a policy requirement. In this case, the profit / loss account was only submitted with the appeal and only provided to the Council part way through the appeal process. As a consequence, the Council incurred more cost in examining this evidence.

The response by Mr Daniel Power

5. The appellant's response was made orally at the Hearing.

6. The appellant claimed that the profit / loss account was believed to have been submitted with the original application and was referenced in the planning statement submitted with the application. Issues can arise with the submission of documents through the planning portal. The absence of the account was not raised by the Council when it received the application. There was ample opportunity to request the account subsequently, which it would have been reasonable to do.

7. There was no intention to deceive the Council; it was an issue of poor communications. The appellant only became aware that the Council had not seen the profit / loss account when he received the Council's statement of case, at which time the appellant sought to rectify the situation. It is common in hearings that information is provided up to the day of the hearing for discussion. The Council were given the opportunity to comment on the profit / loss account as it requested. There was no indication at that time that the Council was unhappy and given the timescale for the appeal, the Council was not prejudiced or impacted in any way. Even if the financial information had been submitted earlier, the Council would have had to consider it anyway so there has not been any specific unreasonable cost to the Council.

Reasons

8. National Planning Practice Guidance (PPG) advises that, regardless of the outcome of the appeal, costs may 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.

9. In my view the failure of the appellant to submit the profit / loss account with the planning application was nothing more than an unfortunate oversight. The reference to this account in the planning statement indicates to me that it was intended to be submitted with the application. I do not find that the failure to do so amounts to a deliberate concealing of relevant evidence at that stage, nor have I any evidence that the appellant refused any request from the Council to provide the information before it determined the application. The profit / loss account was submitted in a timely manner with the appeal and although was not provided to the Council until part way through the process, the Council had adequate time to consider it and respond.

10. I therefore find that the appellant has not behaved unreasonably. Even if I had, it is evident that the Council would have had to consider the profit / loss account in any event. Presumably it would have considered it inadequate to satisfy Policy RLP 85 whenever it was submitted. I have no evidence therefore that the earlier submission of the profit / loss account would have avoided the need for an appeal nor that the Council has incurred any unnecessary expenditure as a result of the account's later submission.

Conclusion

11. I therefore find, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated in this appeal.

12. The application for an award of costs is therefore refused.

Martin Small

INSPECTOR