The Planning Inspectorate

Costs Decision

Site visit made on 23 August 2022

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2022

Costs application in relation to Appeal Ref: APP/M2840/W/22/3294888
Dungee Corner, Harrold Road, Bozeat, Wellingborough NN29 7LP

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ms Ruth Taylor for an award of costs against North Northamptonshire Council.
- The appeal was against the refusal of planning permission for construction of a new 4 bedroomed dwelling with a detached double garage, a detached potting shed, greenhouse, new vehicular access, boundary treatments and gates and associated hard and soft external work.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The application centres on the applicant's claim that the Council: (a) failed to have adequate regard to the proposed development's accordance with national policy, and other material considerations; (b) refused planning permission on planning grounds capable of being dealt with by condition; (c) failed to co-operate with them in not requesting information; and (d) did not review their case promptly following the lodging of the appeal against refusal of planning permission. PPG indicates that local planning authorities will be at risk of an award being made against them if they behave in such ways.

4. Regarding matter (a), starting with the updated provision of paragraph 80(e) of the National Planning Policy Framework (Framework) 2021. I see evidence in paragraph 7.7 of the Council Planning Officer's Report to North Northamptonshire Area Planning Committee (Wellingborough) (Planning Committee) of regard to the 2021 Framework update that dropped 'innovative' from paragraph 80(e), compared to previous version's paragraph 79(e).

5. Moreover, as set out in my decision, this 2021 Framework amendment did not alter the text in Joint Core Strategy Policy 13 criterion 2a), which states the requirement for exceptional quality or innovative design. Nor did it alter the emphasis on innovative standards of sustainable design in supporting text paragraph 5.43 cited by JCS Policy 13 criterion 2a). Thus, the Council behaved

reasonably in having regard to innovation as a rural housing exceptions criterion in this case.

6. As cited in the fourth reason for refusal (RFR), lack of information about heating and cooling provision for the building impeded assessment of and necessary certainty about the innovation and design implications of these elements of the proposal. In the context of the stringent criteria of rural exceptions policy for isolated rural dwellings, it was reasonable for the Council to state their concern on this point.

7. Turning to the provisions of paragraph 133 of the Framework, this sets out that in assessing applications, local planning authorities should have regard to the outcome from processes for assessing and improving the design of development, including any recommendations made by design review panels.

8. The recommendations of the Design Midlands Design Review Panel (DRP), as addressed in my decision, are as follows. The DRP[1] made the following recommendations about the proposed dwelling scheme. They believe it to be a strong scheme that would sit comfortably in its context, and be capable of meeting the Framework's exceptional quality criteria for isolated rural dwellings. They support the approach to the site, the 'reveal' design concept, the position of the garage, the materials palette, and the proposed dwelling's scale, mass and form. They also suggested that further supporting design 'narrative' material be prepared to illustrate the meadow 'bleeding' into the site, landscaping and outdoor spaces, the 'reveal' journey through the house and garden, the building elevations' relationship to its immediate context, and detailed use of traditional materials in a contemporary manner.

9. In references to the DRP's responses on the scheme in the Planning Officer's Report to Planning Committee, including for example in paragraph 2.5, I see evidence that the Council's Planning Officer had regard to the DRP's recommendations. However, in this Report there was a lack of i) reference to Framework paragraph 133, ii) description of the DRP's recommendations, and iii) clearer articulation of the Planning Officer's concerns in terms of how they diverged from the DRP's recommendations.

10. This indicates that information about and analysis of the DRP's recommendations was not sufficiently clearly articulated in the Planning Officer's Report to ensure that the Planning Committee was able to fully have regard to these recommendations. This was unreasonable on the part of the Council.

11. Regarding matter (b), starting with the second and third RFRs, the Council was entitled to exercise its planning judgement about the proposed large entrance gate as an element relevant to assessment of the immediate setting of the proposal and the character of the local character. In relation to the fourth RFR, as established earlier, it was reasonable for the Council to state their concern about lack of information about heating and cooling provision, as this impeded necessary certainty to ensure that the stringent criteria of rural exceptions policy for isolated rural dwellings could be met.

12. In terms of the fifth RFR, it will be clear from my decision that I consider that, in the light of additional bat roosting and biodiversity net gain assessment

[1] As set out in the DRP's Design Re-review of the scheme, May 2021.

evidence submitted by the appellant to the appeal, the proposal would make adequate provision to safeguard protected species and biodiversity. However, that said, this additional evidence was not before the Council at the time of making their decision. In the consequent absence of necessary certainty to demonstrably meet the requirement to safeguard protected species and biodiversity, it was reasonable for the Council to set out their concern in the RFR. Therefore, the Council did not refuse planning permission on planning grounds capable of being dealt with by condition.

13. Regarding matter (c), details of technologies to facilitate heating and cooling, and additional bat roosting and biodiversity net gain assessment evidence, were not presented to the Council before their decision. As an appellant ultimately decides the content of their application, there is some onus on them to submit sufficient information about their scheme to provide necessary certainty on decisive matters. Given this, the absence of a request for the above additional information from the Council, before making their decision did not amount to lack of co-operation.

14. Regarding matter (d), I see no decisive evidence that the Council failed to review their case promptly following the lodging of the appeal.

15. To conclude, I find as follows. Given my finding regarding matters (b), (c) and (d), unreasonable behaviour did not occur in respect of grounds for refusal, co-operation, and prompt review of case.

16. In relation to matter (a), unreasonable behaviour did occur in terms of insufficient articulation of information about and analysis of the DRP's recommendations in the Planning Officer's Report to Planning Committee. However, that said, the Council's concerns in this case went beyond the views of the DRP, and the Council were not automatically bound to agree with the DRP's recommendations. As such, it is not clear that had the Council been clearer in their articulation in this regard, the core appeal arguments would have been substantially different in scope, or an appeal would have been avoided.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in relation to matters (a) to (d). Accordingly, the application for costs fails.

William Cooper

INSPECTOR