Costs Decision

Hearing Held on 27 September 2022

Site visit made on 27 September 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Costs application in relation to Appeal Ref: APP/P1940/W/22/3297122
The Mulberry Bush Farm, Dawes Lane, Sarratt WD3 6BQ

- 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 T W Norris for a full award of costs against Three Rivers District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of agricultural workers dwelling with associated curtilage without complying with a condition attached to planning permission Ref 17/2169/FUL, dated 18 December 2017.

Decision

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

The submissions for Mr T W Norris

2. The applicant's costs application was submitted several days prior to the opening of the Hearing and has four grounds claiming to show unreasonable behaviour by the Council:
    - The Council retained 'an acknowledged unreasonable condition' and so failed to properly exercise its development management functions;
    - The Council's reason for refusal was not substantiated or relied on in evidence;
    - The Council met with the applicant, without representation from their agent or agricultural consultant; and,
    - The Council initially indicated that it would agree to the Written Representations procedure, but inadvertently requested a Hearing on the Appeal Questionnaire document.

3. The unnecessary or wasted expense incurred is for the work undertaken in preparing the appeal documents, initially for Written Representations and subsequently for a Hearing, together with all associated activities, including attendance at the Hearing and site visit.

The response by Three Rivers District Council

4. The Council's response to the application was submitted immediately prior to the opening of the Hearing, and addressed the four grounds of unreasonable behaviour:

    - The condition was not unreasonable because the Mulberry Bush farm remained in agricultural use. Members disagreed with their officer's recommendation to vary the condition based on the recommended model condition in Circular 11/95, as they are entitled to do. Paragraph 105 of the Circular advises that '*it will not be appropriate to remove*…(the condition)…*on a subsequent application unless it is shown that the existing need for dwellings for agricultural workers in the locality no longer warrants reserving the house for that purpose*';

- The Council maintains that the continuing agricultural use of the farmland at the Mulberry Bush farm substantiates their case, consistent with the guidance in Circular 11/95, Paragraph 105;
- The Council's agricultural consultant met the applicant pursuant to preparing the Council's Appeal Statement. No Council officer was in attendance and had the applicant required their agent or agricultural consultant to attend, they could have made the appropriate arrangements; and,
- An unfortunate error was made by the Council in ticking the Hearing box on the Appeal Questionnaire document, instead of the Written Representations box. Notwithstanding this human error, the decision that the appeal should be determined by Hearing was made by the Planning Inspectorate, not the Council.

Final Comments from Mr T W Norris

5. Following the submission of the Council's written response to the written costs application, the Hearing was briefly adjourned. This allowed the applicant time to read the Council's response before verbally responding to it, once the Hearing reconvened. I have had regard to the various submissions and the applicant's verbal response in determining this application.

Reasons

6. The Government's 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.

Ground 1

7. The Council's officer report stated that the condition was '*arguably*' unreasonable and was inconsistent with the National Planning Policy Framework 2021, PPG and the model condition in Appendix A of the otherwise revoked Circular 11/95. Nevertheless, Members disagreed with the officer recommendation, as they are entitled to do, and refused permission for the condition to be removed.

8. However, the Council refused permission for a proposal I have found to be capable of being satisfactorily addressed by way of a condition. This is, therefore, unreasonable behaviour by the Council.

9. However, in this case the applicant was seeking to remove the condition, not to vary it, and I am satisfied from the evidence that the applicant would have almost certainly appealed the Council's Decision, even if they had varied the condition to address the issue of Reasonableness, such as was recommended by their officers. Consequently, an appeal addressing the same general issues would have been required and I am not, therefore, satisfied that the applicant has incurred unnecessary or wasted expense in the appeal process as a result of the Council's unreasonable behaviour.

Ground 2

10. Notwithstanding the above, with regard to Ground 2 of the costs application, the Council's reason for refusal refers to '*The proposed variation to the wording of Condition 11…*'. Given the proposal before the Local Planning Authority was to remove Condition 11, it is not clear from the reason that Members fully understood what was proposed in making their decision.

11. This confusion is continued in the Council's appeal statement, which whilst advocating for the retention of an agricultural occupancy condition at the appeal dwelling, also states that '*the current agricultural occupancy condition is restrictive and should be altered*'. This was in essence the recommendation of officers but was not the decision taken by the Local Planning Authority in refusing permission to remove Condition 11.

12. The Council's reason for refusal is somewhat muddled, as set out above, and both its appeal statement, and its response to this costs application, makes reference to cancelled Government guidance, specifically paragraphs in the cancelled Circular 11/95. Such guidance has no weight as Government policy.

13. Nevertheless, I am satisfied the Council's reason for refusal, officer report and appeal statement provide sufficient information to show why permission was refused to remove the condition, and to allow the applicant to respond at appeal, as they have done. Whilst I have come to a different conclusion to the Council in my main decision, I do not consider this to be unreasonable behaviour.

Grounds 3 and 4

14. It is not clear to me why the third ground for costs would be considered unreasonable behaviour. The applicant was not obliged to meet the Council's agricultural consultant but chose to do so, seemingly without recourse to their professional representatives. This ground is frivolous and approaching vexatious.

15. The fourth ground also has little merit. Under S319A of the Town and Country Planning Act 1990 (as amended) it is the Secretary of State, that determines the procedure for appeals, although in most cases it is the Planning Inspectorate that acts on their behalf. This is elaborated upon at Paragraph 2.7 of the Procedural Guide: Planning Appeals - England (April 2022).

16. Whilst regard to the preferences of the parties concerning appeal procedure will be had by the Planning Inspectorate, such preferences are not determinative in themselves. In this case the Council has accepted that a mistake was made in completing the Appeal Questionnaire. Whilst regrettable that such a mistake was not identified prior to the submission of the Questionnaire, an appeal involving an agricultural occupancy condition is commonly dealt with at a Hearing, given the need to test the evidence of the parties.

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated and that an award of costs is not justified.

A Parkin

INSPECTOR