The Planning Inspectorate

Costs Decision

Site visit made on 10 May 2022

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

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Costs application in relation to Appeal Ref: APP/C1625/W/21/3289996 HALMORE MILL, 41402 LANE TO SEWAGE WORKS, DURSLEY, GLOUCESTERSHIRE, GL11 5DW

- 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 Geoff Vatcher for a partial and full award of costs against Stroud District Council.
- The appeal was against the refusal of prior approval for change of use of an agricultural building to two dwellings (Class Q) (revised submission following determination of application S.19/1183/P3Q).

Decision

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

Reasons

2. 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.

3. 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.

4. The applicant's claim for costs is on the basis of three grounds. I shall cover each in turn.

5. Firstly, the applicant states that the Council's third reason for refusal relating to whether the site was used solely for an agricultural use as part of an established agricultural unit on the 20 March 2013 was unsubstantiated and that the Council failed to give appropriate weight to the statutory declaration which was provided. In doing so the applicant holds that the Council have acted unreasonably in preventing development that should ordinarily be allowed to proceed.

6. Whilst the applicant disagrees with the decision made by the Council, as set out within my decision on the appeal itself, the evidence provided was not conclusive and the Council was entitled to reach its own conclusion using

planning judgement and on the basis of the evidence which was provided. The Council Officer's Report is clear that the statutory declaration was considered as one part of the evidence before them and sets out their reasons for reaching an alternative view.

7. Furthermore, though the applicant holds that in refusing the application on this basis the Council have acted unreasonably in preventing development that should have been allowed to proceed, this reason for refusal was one of five. Even if the Council had agreed with the applicant's perspective on this matter the application would likely still have been refused and the appeal would have remained necessary.

8. The applicant's second ground is that in refusing the prior approval on the lack of information pertaining to biodiversity the Council have stepped outside of the remit of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (The GPDO).

9. Whilst I acknowledge that protected species are not specifically referred to in the consideration of Class Q, paragraph Q.2(1) of the GPDO does require consideration of whether the location or siting of a building makes it otherwise impractical or undesirable to create a dwelling. The Planning Practice Guidance (PPG) provides some further information about considerations which might be relevant when considering whether it would be impractical or undesirable to create a dwelling. The PPG sets out that 'impractical' reflects that the location and siting would "not be sensible or realistic", and 'undesirable' reflects that it would be "harmful or objectionable".

10. Moreover, Regulation 9(1) of the Conservation of Habitats and Species Regulations 2017 imposes a duty, which applies equally to applications for prior approval, for the competent authority to consider relevant Directives and whether there is a reasonable likelihood of Protected Species being present and affected by a proposal.

11. Consequently, I consider that the Council did not act unreasonably in this respect but have rather interpreted Class Q in a different, but reasonable, way and also undertaken their duties in respect of the 2017 Regulations.

12. The applicant also considers that the Council acted unreasonably in not disclosing the comments received from their Biodiversity Officer until the Officer's Report was made available post decision. The Council, however, maintain that this information was made publicly available on the Council's website prior to the determination of the application. I have not been provided with substantive evidence from either party in respect of this matter. However, even if the applicant was not aware of this concern prior to the issue of the decision, the reasons for refusal are clear and the matter has not resulted in wasted expense at the appeal stage.

13. The applicant's final ground is that comments from the Council's Contaminated Land Officer were also not made available to the applicant and were later referenced in the Officer's Report. Once again, the Council hold that these comments were made available on their website.

14. A Phase 1 Contaminated Land Desktop Assessment was carried out prior to the submission of, and submitted with, the application. This assessment states that a further Phase 2 Contaminated Land Assessment is required. In this instance

the applicant was aware of the need for further assessment as a result of the findings within the Phase 1 Contaminated Land Assessment. As such, irrespective of whether or not the Council Officer's representation was made available, the position on this issue would have been clear to the applicant.

15. The applicant also holds that, based on the information gathered during the Phase 1 Assessment, this matter could have been dealt with by way of a suitably worded planning condition. However, Paragraph Q.2(1)(c) of the GPDO requires consideration of the contamination risks on site. As such, in my view, this matter goes to the heart of whether or not the proposal would comply with the provisions of the GPDO and I do not consider that the information provided was sufficient to enable a decision to confidently be taken in this respect. However, even if in relation to this issue a condition could have been attached the other reasons for refusal would have remained and the application and appeal process would not have been altered.

16. Accordingly, for the reasons set out above, I do not consider that the Council have prevented or delayed development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. In my view, the Council considered all of the evidence before them and reached a decision in the context of their interpretation of the GPDO and other relevant legislation.

17. I note the applicant's view that they have incurred additional expense in having to appeal against unnecessary reasons for refusal. However, due to the number and nature of the other reasons for refusal I do not consider that the appeal could have been avoided altogether. Moreover, I do not consider that the Council behaved unreasonably in applying their judgement and any expense incurred in refuting these reasons for refusal would have been minimal in the context of the wider appeal process.

18. As such, based on the evidence before me, I do not consider the Council behaved unreasonably. Moreover, unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, an award of costs is not justified.

Conclusion

19. 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