The Planning Inspectorate

Costs Decision

Hearing (Virtual) held on 29 June 2022

Site visit made on 30 June 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Costs application in relation to Appeal Ref: APP/Y9507/W/21/3275512
Broadlands Meadow Farm, Town Lane, Sheet, Petersfield, GU32 2AF

- 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 & Mrs L. Milton for a full award of costs against South Downs National Park Authority.
- The hearing was in connection with an appeal against the refusal of planning permission for a rural workers dwelling and farm track.

Decision

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

The submissions for Mr & Mrs L Milton

2. The application for an award of costs against the Council was made at the hearing. A written statement set out the grounds of the application. The application is for a full award of costs.

The response by the South Downs National Park Authority

3. The response was made in writing by the Council.

Reasons

4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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.

5. The application for costs is in two parts. Firstly, in relation to procedural matters, the applicant cites the unreasonableness of the respondent in its failure to adhere to timelines and provide a proper explanation.

6. In this instance, the statutory date for determination was the 13 February 2020. The application was subsequently determined by the respondent on the 10 December 2020. The evidence shows that an extension of time (EOT) for the determination of the application to the 7 December 2020 was agreed by the parties. However, this agreement was given by the applicant during November 2020, a considerable time after the statutory date had elapsed. No further EOT has been brought to my attention as having been agreed at an earlier date and whilst the Covid-19 pandemic is cited as a complication to dealing with the matter in a timely manner, I note that the statutory date had already elapsed prior to the initial 'lockdown' period in March 2020.

7. By reason of the timings, the impact of the pandemic cannot be relied upon as having unduly compromised the respondent's ability to deal with the application in a timely manner at the outset. Importantly, the respondent concedes that there was delay in instructing an agricultural consultant. The respondent has not sought to explain the nature of this delay and to my mind, in the absence of any proper explanation for the delay in instructing an expert, I take the view that the respondent acted unreasonably in this regard.

8. Reference is also made to the respondent's failure to forward experts' correspondence in a timely manner and its failure to seek further views of their agricultural expert. However, in the absence of evidence of specific examples of failing to forward correspondence and taking account of the respondent's table detailing the timeline for correspondence between the parties, I am not satisfied that the applicant has adequately demonstrated this to be the case.

9. Notwithstanding that I have found the respondent to have acted unreasonably in respect of its delay in instructing an agricultural expert, the consequent failure to determine the application within the statutory time frame and failure to give proper notification of its explanation for the delay, in order to be successful on this procedural basis, the applicant must demonstrate, in addition to unreasonable behaviour, that it has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In this instance, the respondent's reason to refuse the application was unaltered and the appeal unavoidable. Accordingly, I am not satisfied that the applicant has demonstrated unnecessary or wasted expense arose due to procedural matters.

10. Turning to substantive matters and the types of behaviour that may give rise to a substantive award of costs against the respondent, my attention has been drawn by the applicant to several examples it considers to be pertinent from within the PPG. In particular, i) preventing or delaying development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; ii) acting contrary to, or not following, well-established case law; iii) not determining similar cases in a consistent manner; and iv) not reviewing their case promptly following the lodging of an appeal against refusal of planning permission.

11. It is the applicant's case that the proposed development was plainly in accordance with the development plan. Whilst I have found in favour of the applicant by allowing the appeal and granting planning permission, this has to be viewed in the context of the mechanism for assessing viability and whether the proposed agricultural enterprise has an essential need for a worker to live there or not.

12. In terms of this assessment, with regards to adopted local and national planning policy, the parties have accepted that there is no precise guidance for determining the methodology for the assessment of viability.

13. The parties make reference to Annex A to Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7), which sets out the functional and financial tests for permanent and temporary dwellings. However, the criteria set out in Annex A of PPS7 no longer has any status as national planning policy. It is open to a Council when preparing their Local Plan to decide on any detailed policy criteria it considers appropriate to apply to such

proposals. Whilst the parties suggest that the criteria of Annex A underpins their assessment of applications for rural workers' dwellings, this criteria has not been formally adopted as part of the Local Plan.

14. The test under paragraph 80 a) of the National Planning Policy Framework is different from that under Annex A of PPS7, in that it simply requires a judgement of whether the proposed agricultural enterprise has an essential need for a worker to live there or not. However, there is no indication that in making that judgement, the decision-maker does not need to take account of matters which were previously included within PPS7 Annex A. The matters at issue here concern the exercise of that judgement and whilst I have not taken the same approach as the respondent in a number of these matters, that is not to say that they have been unreasonable in exercising their own planning judgement.

15. For instance, I have found that the use of average profits over a three year period is inconclusive in assessing the viability of the enterprise. Whilst it gives an indication of the historic performance of the enterprise, in my planning judgement, it is likely that such an average assessment taken during a 'trial period' of operation is likely to skew the results towards a position of non-viability. Given the position in the case of Jarmain[1], I am not persuaded that it is entirely without merit to refer to it, but that any evidence of average profits needs to be considered alongside other information to gather a 'whole picture' of the foreseeability of the enterprise being viable in the future.

16. Similarly, whilst I have concluded that it is appropriate to include items of income that do not benefit from the identified functional need for a person to reside at the appeal property for most if not all times, this approach may not apply in all situations. Each case will need to be assessed on its own merits. In instances whereby non-functional income is a main contributor to overall profitability, it would seem appropriate for it to be removed. However, in the appeal case, for the reasons I have heard and read, I have concluded that it is not necessary to exclude it with regards to the appeal scheme before me.

17. Likewise, whilst the respondent's treatment of the stock valuation differs to the view of the applicant, and indeed my own findings, the basic premise of a valuation figure being included is not disputed. Rather, the matter turns on the increase in valuation. In the absence of any clear requirements stipulating what should be included for the purposes of valuing stock, it is a matter for planning judgement. Whilst an assessment of the female breeding alpaca stock was provided as part of the application, no similar exercise has been undertaken with regards to the remaining livestock.

18. For the reasons explained within the decision letter, I am satisfied with the submitted evidence regarding the valuation of stock. However, I am also minded to accept that it is not unreasonable for the respondent to request further information regarding the stock valuation and in exercising its own planning judgement, arrive at the decision that it made. The applicants' accountant gave a credible explanation at the hearing regarding the treatment of stock within the financial accounts alongside the requirements set out within HMRC guidance. Taking all matters into account, whilst I have reached a different planning judgement from the respondent, that is not to say that they have behaved unreasonably in forming their view, which in turn provides a not-

[1] Jarmain v SoS and Welwyn Hatfield DC [2001]EWHC Admin 1140

unreasonable approach to rejecting the applicant's view regarding average profits over more recent years being in the region of £42,000.

19. It is put to me that it is not the respondent's usual approach in assessing proposals for similar rural workers dwellings to include a measure of average profits. However, no specific examples of other schemes have been provided and therefore I attach little weight to this matter.

20. However, I note that in their determination of the temporary planning permission the respondent did not utilise a measure of average profits, nor did it remove income not attributable to the identified functional need. As such, there are some inconsistencies in their approach to decision-making. Although the application for temporary planning permission was assessed with regards to a development plan that has since been superseded, no clear explanation regarding the different approach has been stipulated. In the absence of clear and compelling reasoning, I take the view that the respondent has not determined cases in a similar manner.

21. Notwithstanding that I have identified a number of areas where I consider the respondent has acted unreasonably, I am not satisfied that the appeal would have been prevented and the wasted and unnecessary expense would have been avoided. An award of costs is therefore not justified.

E Brownless

INSPECTOR