The Planning Inspectorate

Costs Decision

Hearing held on 7 March 2023

Site visit made on 7 March 2023

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Costs application in relation to Appeal Ref: APP/X1355/W/22/3313275
Sandbed Farm, Ramshaw Lane, Ramshaw, Durham, DL14 0NB

- 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 D Proudfoot for a full award of costs against Durham County Council.
- The appeal was against the refusal of planning permission for a development described as: Erection of detached dwelling and garage together with associated poultry hut.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.

3. The application for an award of costs is predicated on the procedural grounds of the Council introducing the matter of animal movement orders into the proceeding at a late stage in the appeal process; not giving full and proper consideration to the scope and extent of a previous planning permission (Planning Permission Reference DM/20/01744/FPA); not giving weight to critical strands of the business activity which legitimately contribute to the functional need; interpreting Policy 12 of the County Durham Plan (the CDP) inconsistently with the ordinary meaning to be attributed to the policy; and having assumed the availability of alternative accommodation on the site which is physically non-existent. The application also seeks an award of costs on the substantive grounds that the Council prevented, or delayed, development which should clearly be permitted and that the Council acted contrary to, or did not follow, well established case law.

4. In respect of the procedural points. I have noted with regard to the matter of animal movement orders, that this is referenced in the Planning Officer's delegated report on the planning application and also, as the Council point out, included as a disputed matter in the initial draft of the Statement of Common Ground. Consequently, I am not persuaded that the appellant was not cognisant of this point, or that the matter was only raised late in the appeal process, and I do not find that the Council has acted unreasonably in this respect.

5. The scope and extent of the previous planning permission and the aspects of the business that are relevant to the functional need are to an extent inter-related. I have found that, based on the evidence put to me, that planning permission DM/20/01744/FPA did not authorise a commercial livery use at the site as, notwithstanding the references to this in the supporting statement, it is not included in the description of the proposal, either on the application form or in the section of the supporting statement that sets out the development proposed. The schedule of plans included in the decision notice refers only to the extension to the building and not the original part which contains the loose boxes. The Council officer's report on the appeal proposal considers the requirement with regard to puppy breeding. Consequently, I do not find that the Council acted unreasonably in respect of these matters.

6. Policy 12 of the CDP sets out at criterion b. that proposals for rural worker's dwelling are required to demonstrate that the rural business has been established of at least three years, is currently financially sound and has a clear prospect of remaining so. It is common ground that a business has been operating at least three years. Whilst there was some financial information provided at the time that the planning application was submitted, this did not cover a three year period It was not until after the Council had submitted its statement of case and shortly before the hearing that that finalised accounts were provided for a three year period.

7. The wording of Policy 12 and its supporting text does not explicitly state that it must be demonstrated that the business has been profitable for three years. The policy does however require evidence that the business has a clear prospect of remaining financially sound in order that any functional need for a rural worker will remain into the future. The past profitability of the business would be a factor in determining and demonstrating this, and in the above context it was not unreasonable for the Council to take the position that it did.

8. In relation to available accommodation at the site, the Council state that the reference to the first floor of the hatchery building in its statement of case is a typing error and that, in any event, the relevant section of the Council's Statement of Case clearly makes reference to the approved drawings. I would concur with the Council that it is very difficult to see how this amounts to unreasonable behaviour or would have resulted in any additional costs to the appellant.

9. Taking the procedural grounds overall, I do not find that the Council has acted unreasonably.

10. Turning to the substantive grounds, as I have dismissed the appeal, the Council have not prevented or delayed development which should clearly be permitted. With regard to the second substantive ground, this is tied into the scope and extent of planning permission DM/20/01744/FPA. Having had regard to the authorities cited and the evidence available to me, I reached a similar conclusion to the Council that the livery stable use fell outside of the current planning permissions for the site, although I did find that, in so far as it is relevant to the current appeal, the use of the extension to the barn for dog breeding was probably covered by that permission. The Council did take account of the use for dog breeding and as the decision maker at the time it was for the Council to determine what weight to give to this factor. Within that

context I do not find that the Council acted in an unreasonable manner and that the application for costs should not succeed on this ground.

Conclusion

11. In the light of the above I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

John Dowsett

INSPECTOR