



Costs Decision

Site visit made on 4 July 2023

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09.10.2023

Costs application in relation to Appeal Ref: APP/K0235/W/22/3309356 Hill Farm, Sunderland Hill, Ravensden MK44 2SJ

- 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 Ms Claire Donkin for a full award of costs against Bedford Borough Council.
- The appeal was against the refusal of planning permission for a Reserved Matters application for an agricultural workers' dwelling with respect to application reference. 15/00447/OUT and in connection with matters of siting, design, external appearance, the means of access and the proposed landscaping.

Decision

1. The application for an 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 therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's alleged unreasonable approach during the determination of the planning application. The applicant states that this behaviour caused the application to be refused, thereby necessitating the preparation of the appeal. The applicant seeks a full award of costs.
4. The applicant states that the Council relied on incorrect information which ultimately led to the refusal of the application. It is stated that the Council incorrectly relied on external floor area measurements when calculating the scale of the proposed dwelling and incorrectly applied the government's Technical Housing Standards – Nationally Described Space Standard (NDSS).
5. I have found that there was no policy justification for the application of the NDSS and furthermore that these are minimum standards which do not relate to the functional requirements of an agricultural worker's dwelling. Additionally, I note that the plan submitted with the planning application was annotated with the appropriate scale and that the Council have accepted that they have incorrectly referred to the external floor area in their Officer Report. Whilst I have attributed due weight to the requirement for enlarged ground floor accommodation to accommodate wheelchair access and the accommodation requirements of appellant's father, nonetheless the justification for this accommodation does not appear to have been made during the planning application and thus the Council were not in a position to take this into account. The Council presented a suitably substantiated case in support of their decision which, notwithstanding the application of NDSS, went into appropriate

detail on how the scale of the dwelling and the accommodation proposed would not be of a size commensurate with the established functional requirement of the rural enterprise.

6. The Council has stated that refusal reason 1 was cited in error and both parties agree that this refusal reason does not reflect the consultation comments of the Council's Tree Officer. No justification within the Officer's Report is given for departing from this view. This constitutes unreasonable behaviour. However, I have not been presented with any evidence of substantive work undertaken preparing a case in respect of the first refusal reason, and therefore wasted expense has not been demonstrated. As the appeal was inevitable due to refusal reason 2, I find that this unreasonable behaviour did not result in unnecessary or wasted expense during the appeal.
7. The applicant also states that delays in the determination of the application amounted to unreasonable behaviour and that the extent of these delays resulted in the application being assessed against a new development plan, the Bedford Borough Local Plan (2020), with which conflict was found. Whilst the delays in determining the application are unfortunate, it would appear that the Council were not in a position to determine the application until errors with the site location plan had been rectified and additional information relating to the effect of the proposal on protected trees had been submitted. Thus, the Council determined the application in the context of the relevant development plan policies at the time of the determination of the application. Furthermore, I note that the Council did ultimately decide on the application. Therefore, the applicant did not incur unnecessary or wasted expense in the appeal process because of these delays.
8. The applicant also states that better engagement between the applicant and the Council would have afforded the applicant an opportunity to provide further justification for the need of a dwelling at the size proposed. Nonetheless, during the application the appellant was given ample time to put forward any further arguments relating to the justification for the scale of the dwelling. The Council determined the application based on the information presented to them and this does not amount to unreasonable behaviour.
9. The applicant states that the second reason for refusal relates to the scale of the dwelling, however condition 1 of the outline planning permission¹ does not include 'scale' as a reserved matter. However, scale was not approved as part of the outline application. For whatever reason, the Council's condition seeking approval of the reserved matters appears to relate to those specified in out-dated legislation. Against those matters, it is likely that scale was a matter that would fall to be considered under design and appearance. Nevertheless, it is clear from the documentation before me, including the application form and the design and access statement, that scale was intended to be a reserved matter at outline stage, and that the reserved matters application the subject of the appeal was clearly submitted for approval of all matters. Therefore, this did not result in unnecessary or wasted expense in the appeal process.

Conclusion

10. I find that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

¹ Reference 15/00447/OUT

Nichola Robinson

INSPECTOR