



Costs Decision

Hearing held on 19 September 2023

Site visit made on 19 September 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2023

**Costs application in relation to Appeal Ref: APP/M2840/W/22/3313880
Stoke Farm House, Ashley Road, Stoke Albany, Northamptonshire
LE16 8PZ**

- 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 and Mrs Brodie for a full award of costs against North Northamptonshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of one house with farm office and garage without complying with a condition attached to planning permission Ref KE/87/49, dated 25 March 1987.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submission for Mr and Mrs Brodie

2. The applicants' costs application was made orally at the Hearing. They are seeking a full award of costs against North Northamptonshire Council. The applicant contends that the Council failed to produce evidence to substantiate the reason for refusal due to the failure of the Council to determine the planning application within the prescribed period. Furthermore, they consider that the Council relied upon the evidence of Reading Agricultural Consultants' report ('the RAC report') which was based upon Policy 13 of the North Northamptonshire Joint Core Strategy 2011-2031 ('the CS'). Therefore, it is their opinion that evidence was not submitted to substantiate the Council's case.
3. In addition, the applicants consider the Council acted contrary to well established case law in that planning applications should be determined in accordance with the development plan. This is on the basis that the Council conceded that if a planning application was for a dwelling within the settlement boundary, in all likelihood, it would be approved without the agricultural occupancy condition. The applicants therefore believe that the Council are seeking to impose a condition that is not necessary.
4. The applicants also assert that the Council failed to review their case promptly following the applicants' lodging of the appeal against the failure of the Council to determine the planning application within the prescribed period, as part of sensible on-going case management, and the Council relied upon the RAC report but they stated at the Hearing that it was not relevant to the appeal. Consequently, the appellants consider the appeal was unnecessary had the Council acted reasonably.

The Response by North Northamptonshire Council

5. This was provided orally at the Hearing. The Council assert that the Statement of Common Ground ('the SoCG') was submitted on time and allowed the applicants' time to respond. They maintain that the SoCG indicates that Policy 13 was not relevant, and the Council has an email trail as confirmation. Therefore, they consider that it should not have been a surprise to the applicants at the Hearing that the Council considered that CS Policy 13 was not of relevance to the appeal proposal. The Council consider that sufficient time was available to the applicants for them to address the implication of the Council withdrawing CS Policy 13.

Reasons

6. 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.
7. The application relies on the fact that it was unreasonable to refuse planning permission and the Council has failed to provide adequate evidence to support their reason for refusal. It is also said that the Council has failed to review its case properly and failed to determine the planning application within the prescribed time limits.
8. The Council's putative reason for refusal relied on CS Policy 13. However, CS Policy 13 is in respect of sites in the open countryside, where-as the appeal site is located within the settlement boundary of Stoke Albany. Furthermore, the Council's case was supported by the RAC report which focuses upon CS Policy 13 and also references "open countryside" and "new dwellings in the countryside", which is irrelevant to the proposal. Therefore, the Council relied upon a policy that was not relevant to the proposed development and failed to provide adequate evidence to support their reason for refusal.
9. It is suggested that during the production of the SoCG the applicants were aware that the Council no longer considered CS Policy 13 to be relevant and therefore the Council's withdrawal of the policy at the Hearing would not have been a surprise to the applicants. However, this has not been substantiated with evidence. Furthermore, the Council could have updated their position in respect of CS Policy 13 and their putative reason for refusal prior to the Hearing, but did not do so.
10. The putative reason for refusal also references CS Policy 11 and Policy RS1 of the Kettering Site Specific Part 2 Local Plan ('the LP'). CS Policy 11 relates to developments within the rural areas, including small scale infill developments within villages, while LP Policy RS1 refers to developments within Category A villages (of which Stoke Albany is identified) and details the types of developments that will be supported. The putative reason for refusal states that the appeal proposal would conflict with both of these policies but does not provide substantive evidence to support why.
11. It is clear that the planning application process ran beyond the 8-week deadline and had the Council determined the planning application in accordance with the policies in the development plan, the appeal would not have been necessary. Therefore, the time taken to defend the appeal was borne out of the

unreasonable behaviour of the Council and the applicants incurred unnecessary expense in the appeal process.

Conclusion

12. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

COSTS ORDER

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Northamptonshire Council shall pay to Mr and Mrs Brodie, the costs of the appeal proceedings described in the heading of this decision.
14. The applicants are now invited to submit to North Northamptonshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Berry

INSPECTOR