Costs Decision

Hearing Held on 18 January 2024

Site visit made on 19 January 2024

by Jonathon Parsons MSc BSc DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2024

Costs application in relation to Appeal Ref: APP/D3505/W/23/3328102
Erwarton Hall Farmyard, Shotley Road, Suffolk, Erwarton IP9 1LQ

- 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 Kyle for a partial award of costs against JRH Veenbaas and Co.
- The hearing was in connection with an appeal against the refusal of planning permission for the conversion, repair and extension of existing agricultural buildings to form five dwellings, along with demolition of existing metal clad barns.

Decision

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

The submissions for Mr and Mrs Kyle

2. Third parties may take part in the cost process and the cost claim is made on procedural grounds. Planning Practice Guidance (PPG)[1] encourages local planning authorities to properly exercise their development management responsibilities, rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add development costs through avoidable delay. The appellant should be subject to a partial award of costs on the basis of examples given in PPG[2], including introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

3. At the hearing, the appellant introduced lengthy additional rebuttal statements on a variety of subjects, including planning, heritage, and landscape. The material includes new strands of argument not found in their Statement of Case, references to case law absent from their previous submission, a new and (incorrect) suggestion that the site constitutes brownfield land and a completely fresh interpretation of what was paragraph 80 (now (84).

4. The rebuttal statements are substantial and was submitted at a late stage. This evidence should have either been provided upon submission of the appeal or the responses should have been delivered aurally. As demonstrated above, the evidence goes vastly beyond signposting, where matters likely to be of interest to the Inspector are addressed, as the appellant alleges in their covering letter dated 3 January 2024. No extenuating circumstances are put

[1] Paragraph:028 Reference ID: 16-028-20140306
[2] Paragraph:052 Reference ID: 16-052-20140306.

forward save for the weak suggestion that it would be helpful. The opposite is true.

5. The applicants have been caused unnecessary and wasted expense through additional preparatory work which was necessary to be able to fully and helpfully participate in the hearing.

The response by JRH Veenbaas and Co

6. The applicants allege that the appellant's rebuttal statements response to the Council's Statement of Case and appeal representations, was unreasonable and that it incurred wasted or unnecessary costs in reading it and preparing to respond. The documents submitted before the hearing were a covering letter, rebuttal to the Council Statement of Case, heritage rebuttal, landscape rebuttal and third party representations reviews. Each document was provided more than a week in advance to the Council and applicant, and each document was uploaded onto the Council's website.

7. The PPG[3] makes it clear that costs will only be made in favour of interested parties in exceptional circumstances. Parties are expected to normally meet their own costs. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

8. Therefore, the applicants need to demonstrate that the submissions were unreasonable, that the behaviour has led to incur unnecessary costs and that there are exceptional circumstances. An application for costs will need to clearly demonstrate how any alleged behaviour has resulted in unnecessary or wasted expense in the appeal process, that the behaviour has led it to incur unnecessary costs and that there are exceptional circumstances.

9. The Town and Country Planning (Hearing Procedure) Rules 2000 provide for the Council's Statement of Case and third party representations to be submitted after the appellant's Statement of Case. Here, there are circumstances where the Council and others submit evidence, which was not available at the time of refusal of the planning application and which the appellant has not had opportunity to respond. The Council submitted new heritage and landscape assessments and the applicants submitted representations appending various other documents.

10. The case law[4] surrounding procedural fairness is clear, a party must know the case that it has to meet and have adequate opportunity to adduce evidence and make submissions on the opposing case. Therefore, as a matter of procedural fairness, the appellant must have the opportunity to respond on the points against it. Furthermore, since the Council made its decision, it has adopted a new local plan and a new version of the National Planning Policy Framework (the Framework) has been published.

[3] Paragraph: 056 Reference ID: 16-056-20161210.
[4] Hopkins Developments Limited v Secretary of State for Communities and Local Government (2014) EWCA civ 470.

11. The appellant could have left it until the appeal hearing to make a comprehensive response to the points raised against it and to address new local and national policies. However, this would have taken up considerable time and would not have been possible in the context of a one-day hearing. Therefore, the appellant took the view that, in order to assist the Inspector and other parties at the appeal, it would respond in writing to the main points.

12. At the hearing, the Council indicated that it had no objection to the additional material, and it was helpful for the appellant to set out its response in advance. It is absurd to suggest that it is unreasonable for the appellant to set out its response. Indeed, it both assists with the smooth running of the hearing and also enables each party to understand, what the appellant's response is to be, and prepare on that basis.

13. The cost application alleges that the rebuttal statements have raised new points, through it declines to specify what these are beyond generalised assertions. Even if new points had been made, then it would not have been unreasonable where those points arise in the context of the existing appeal documentation. In any event, it is entirely reasonable to put any person on notice prior to a hearing of points to be made. No exceptional circumstances have been set out and the applicants have not demonstrated any wasted or unnecessary costs additional to their ordinary appeal hearing preparation.

Reasons

14. The 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.

15. There has been change in policy circumstances at local and national level since the appellant's submitted Statement of Case. The arguments and points made in the Rebuttal Statement are made within the context of the Council's reasons for refusal, officer's report and the Council's Statement of Case. There is no significant new evidence produced with the Rebuttal Statements and rather than being explicit in their comments on alleged new evidence, the applicants just make generalised statements.

16. Even if the documents had not been accepted at the hearing, I am not persuaded that the points and arguments would not have come out aurally in any case during the proceedings. Indeed, most of the points and argument within the documents did come out in discussions at the hearing. Importantly, the applicants are normally expected to cover their own costs and they have not indicated what additional costs that they might have occurred. Furthermore, no exceptional circumstances have been detailed for a cost claim to be granted.

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Jonathon Parsons

INSPECTOR