The Planning Inspectorate

Costs Decisions

Hearing Held on 30 April 2024

Site visit made on 30 April 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Costs application in relation to Appeal A Ref: APP/J9497/W/24/3337657 Stancombe View, Liverton, Newton Abbot, Devon TQ12 6JA

- 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 Ashley Kerslake for a full award of costs against Dartmoor National Park Authority.
- The Hearing was in connection with an appeal against the refusal of planning permission for erection of an agricultural building for the storage of agricultural machinery, fodder, and livestock accommodation.

Costs application in relation to Appeal B Ref: APP/J9497/W/24/3337658 Stancombe View, Liverton, Newton Abbot, Devon TQ12 6JA

- 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 Ashley Kerslake for a full award of costs against Dartmoor National Park Authority.
- The Hearing was in connection with an appeal against the refusal of planning permission for erection of an agricultural workers dwelling.

Decisions

1. The application for an award of costs in relation to Appeal A is refused, and the application for an award of costs in relation to Appeal B is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. Paragraphs 047 and 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities. The applicant considers that the Authority has exhibited unreasonable behaviour on a number of these.

Appeal A

3. Given the great weight that the National Planning Policy Framework 2023 (the Framework) states should be afforded to the conservation of National Parks, I consider that the Authority provided a clear and objective analysis of the proposal's impact on landscape. The appeal site would be visible from a handful of viewpoints along the old A38, including from the car park of the Welcome

Stranger Public House. Photographs during the application may have assisted as to explaining where the appeal site could be seen from. However, the Authority has since provided these in their Statement of Case. Therefore, I consider that the Authority's assertions about the proposal's impact have been substantiated.

4. It was unreasonable for the Authority to not carry out a proper assessment of the landscaping scheme submitted given that it was received by the Authority a month before they issued their decision. The officer's report states that 'no landscaping scheme' had been submitted, which was clearly incorrect and therefore also unreasonable.

5. However, the Authority's Statement of Case provided clarification that 'while appropriate landscaping can help to mitigate the visual impact of a proposal, it is considered that the topography of the site at Stancombe, on the higher reaches of a steeply sloping valley, would limit its effectiveness as mitigation for the proposal'. It was also clear from the discussions at the hearing that whilst the Authority considered that landscaping could mitigate visual impact, it would not mitigate the alleged harm to landscape character. Furthermore, the conditioning of the landscaping scheme would not have overcome the Authority's concerns. Therefore, whilst I have found in favour of the applicant on this particular matter, the omission of the Authority to take in to account the landscaping scheme would not have changed the Authority's view on the proposal and thus has not resulted in any unnecessary or wasted expense in the appeal process.

6. I note that the officer's report in relation to Appeal A referred to the soundness of the farm business as proposed under Appeal B. However, as pointed out by the applicant, the proposal under Appeal A was not refused due to the lack of agricultural justification. Therefore, any reference to the agricultural justification for the proposed agricultural building has not resulted in any unnecessary or wasted expense in the appeal process.

7. Finally, I note from the evidence that there was a number of emails, telephone calls and a site meeting between the applicant and the Authority. However, it was clear from the discussions at the hearing that, notwithstanding the alleged lack of co-operation, there was subjective areas of disagreement that could not be resolved. I do not consider that any more communication would have resulted in a different decision from the Authority such that the applicant has created wasted expense in the appeal process. I find no substantive evidence that the applicant incurred any additional expense as a result of any lack of co-operation.

8. I therefore find that, in relation to Appeal A, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Appeal B

9. I note that the description of development on the application form did not specify that the proposal was for a 'temporary' dwelling. Furthermore, in the applicant's 'Agricultural Appraisal, Planning Statement and Design & Access Statement', they state that 'to enable the business to develop and to take on this opportunity, a permanent dwelling for an onsite worker is essential'. They also cite criteria 1 b) of Policy 3.9 of the Dartmoor Local Plan (adopted 2021), which is the relevant part of the policy relating to permanent dwellings, with no reference to criteria 4 of Policy 3.9 which relates to temporary dwellings.

10. I appreciate that during the course of the application, the applicant made multiple references to the fact that it was for a temporary dwelling, both in email correspondence and at the site meeting. However, I note that at no point during the application did the applicant request for the description of development to be changed nor was a revised 'Agricultural Appraisal, Planning Statement and Design & Access Statement' submitted to refer to the criteria 4 of Policy 3.9. The Authority has no power to change the description of an application without the agreement of the applicant. The Authority therefore determined the application on the basis of the information before it at the time and that was not an unreasonable course of action, in my view.

11. Nevertheless, whilst I acknowledge that the majority of the Authority's assessment of the dwelling has been done as if it were a permanent dwelling, I note that both the Authority's independent agricultural adviser and the Authority's Officer Report concludes that 'it is also that with no clear existing essential need being established, an application for a temporary dwelling as an alternative proposal is also, at best, premature'. Whilst only brief, the Authority did acknowledge that even if it were a temporary dwelling, it still would have refused it and the applicant would still have to had submitted an appeal. Therefore, it has not resulted in any unnecessary or wasted expense in the appeal process.

12. Whilst it would have been preferable for the Authority's agricultural adviser to seek clarification on the information provided to him, it was not unreasonable for the Authority to determine the application on the basis of the information submitted. The onus is on the applicant to provide clear evidence as part of an application. The Authority was able to substantiate its concerns regarding the evidence and it will be seen from my decision that I share the concerns of the Authority on the financial evidence submitted.

13. Furthermore, I appreciate that the applicant considers that there was a lack of cooperation on behalf of the Authority during the application. However, I do not consider that any more communication would have resulted in a different decision such that the applicant has created wasted expense in the appeal process.

14. In regard to the second reason for refusal, whilst I note that the Authority advised the applicant to not go to the cost of preparing a drainage report to address foul and surface water drainage, it was still open to the applicant to submit a drainage report. Furthermore, I note that the applicant chose not to submit any further information in regard to drainage with the appeal. I consider that the Authority had reasonable concerns about the impact of the proposed development which justified its decision. Furthermore, it will be seen from my decision that I agree with the Authority and that I am satisfied that the Authority was able to substantiate their concerns. I also do not agree that it could be dealt with by imposing a condition.

15. In regard to the third reason for refusal, it will be seen from my decision that the concerns in relation to sustainable construction and good design were not unreasonable. I am satisfied that the Authority was able to substantiate its concerns and that these matters were not able to be dealt with by way of a condition. The applicant states that no further details on these matters were requested by the Authority. However, during the appeal process, apart from arguing that they were not required due to the dwelling being temporary, the

applicant did not provide any substantial evidence or further details to respond to this refusal reason nor did they suggest any wording for a condition. Therefore, I do not consider that the reason for refusal resulted in any unnecessary or wasted expense during the appeal process itself.

16. Finally, I acknowledge the issues raised in relation to a decision makers duty under the Public Sector Equality Duty (PSED) contained within the Equality Act 2010. I am also aware of the duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. The Officer's Report does not make reference to these duties which is unreasonable. However, at the hearing, the Authority confirmed that it was not fully aware of the circumstances of the applicant and their family. The situation was fully explained and discussed at the hearing. Following this, the Authority confirmed that it would not have resulted in a different decision on the application such that the applicant has wasted expense in the appeal process.

17. I therefore find that, in relation to Appeal B, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process, as described in the Planning Practice Guidance, has not been demonstrated.

Conclusion

18. For the reasons set out above I conclude that, whilst the Authority exhibited unreasonable behaviour in some respects in terms of the PPG, I find that no wasted or unnecessary expense has been incurred by the applicant in the appeal process. I conclude therefore, that the applications for an award of costs in relation to both Appeal A and Appeal B are refused.

Laura Cuthbert

INSPECTOR