Costs Decision

Hearing held on 5 February 2025

Site visit made on 5 February 2025

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2025

Costs application in relation to Appeal Ref: APP/P0240/W/24/3354683
Warren Stables, Warren Lane, Clophill MK45 4AS

- 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 M and L Stokes for a full award of costs against Central Bedfordshire Council.
- The appeal was against the refusal of planning permission for a development described as "retention of temporary dwelling to create permanent dwelling".

Decision

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

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 case for the applicants is that the Council behaved unreasonably with regard to the substance of the matter under appeal. Examples of this include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; not determining similar cases in a consistent manner, and failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.

4. In respect of the criteria in Policy DC3 of the Central Bedfordshire Local Plan 2015-2035, Adopted July 2021 ("the CBLP"), it was necessary and reasonable for the Council to assess whether the rural business is financially sound. The Council's decision to grant temporary planning permission for the dwelling in 2020, enabled the financial soundness of the business to be assessed at the end of the trial period. It is not proof, in and of itself, that the business is financially sound.

5. The evidence submitted for this appeal includes a number of business accounts that would not have been available at the time of granting temporary planning permission. The judgement the Council made on the financial soundness of the business, supported by the evidence presented, including the expert Agricultural Advisor's (AA) advice, was adequately substantiated on the evidence before it and

was not unreasonable. In respect of the financial tests in CBLP Policy DC3, and the permanent nature of the planning permission sought, it was not unreasonable for the Council to reach a different decision on the appeal scheme to that reached in granting a temporary planning permission.

6. Given the relationship between CBLP Policies SP7 and DC3, with the latter providing an exception to the locational strategy of the former, it was necessary and reasonable for the Council to assess the proposal against Policy SP7. It is relevant that I have found conflict with CBLP Policies DC3 and SP7 in my main decision. It therefore follows that this is not a case where development which should clearly have been permitted has been prevented.

7. The AA's advice regarding the ability of the business to fund a new build dwelling can be sourced back to the applicants' superseded May 2023 Equestrian Planning Statement (EPS). Although later corrected in an updated EPS, by which time the AA was no longer available to the Council, the AA's advice was clear that the enterprise's profits could not fund its labour requirement, let alone a new build dwelling. They are distinct financial considerations in the AA's advice, which were clearly understood by the Council and evidenced in its submissions. I am satisfied that this matter did not unduly influence the Council's assessment of the financial soundness of the business.

8. The additional financial information submitted by the applicants, including confirmation of additional land ownership and wages, was not of a highly technical or complex nature. Therefore, it was not unreasonable for the Council to decide that it did not warrant a review by a second alternative AA prior to deciding the appeal planning application, nor was it under any obligation to do so. This evidence was tested through the appeal process and there is no reasonable basis to find that engaging a different AA would have led the Council to reach a different decision on the matter.

9. Whether or not there is a functional need for a full-time worker to live at the appeal site is a matter of planning judgement. In granting temporary planning permission the Council accepted there was, and the evidence shows it reached that decision on the basis of the evidence before it, including the AAs advice, which is set out within the Case Officer's Report. The Council now departs from the AA's advice, and it explained at the hearing that in granting temporary planning permission too much weight had been placed on the health risks inherent to the horses at the enterprise, and there are elements of the business that have not developed in the way that it considers were envisaged.

10. Over the time that the applicants have lived in the appeal dwelling only a few foals have been born, and incidences of colic and cast have not led to serious harm to horse welfare or deaths. The horse rescue element of the business may have been more sporadic than originally envisaged. However, the number of horses stabled at the appeal site is more or less the same now as it was when the temporary planning permission was granted and the AA's advice to the Council on the appeal proposal is substantially the same. To my mind it is not unexpected, given the reasons for granting temporary planning permission, that serious harm to horse welfare has not occurred whilst the applicants have lived in the dwelling. It would be difficult, if not impossible, for the applicants to evidence that harm to horse welfare would have occurred had they not lived in the dwelling.

11. I have no doubt that the Council's concerns reflect strongly held professional views. However, given that the scale and nature of the enterprise is substantially the same as it was when temporary planning permission was granted for the dwelling, the Council's judgement that there is no longer a need for a full-time worker to live on the application site, thus departing from the AA's advice, has not been adequately substantiated, and was inconsistent with its previous decision. Consistency is an important principle in decision making and this amounts to unreasonable behaviour within the terms of the PPG, and has caused the applicants wasted expense in addressing this matter through the appeal process.

12. I am not satisfied on the evidence before me that the extent of the changes to national policy since 2020, justify the Council departing from the advice of its AA on the need for a full-time worker to live on the application site. I find no clear conflict between the requirements of CBLP Policy DC3 and the AAs expert advice to justify the Council's decision to depart from it.

13. There is no substantive evidence that the applicants incurred any additional expense because of the delay encountered during the Council's determination of the planning application, including from requests for extensions of time and its proposal to appoint an alternative AA, which did not happen. Even if the application had been determined sooner or a different AA appointed, there is no evidential basis to find that planning permission would not have been refused and so the expense of an appeal would still have been necessary. As set out above, and given the outcome of my main decision, this is not a case where development which should clearly have been permitted has been prevented.

Conclusion

14. For the reasons given above, the Council's unreasonable behaviour in departing from the AA's advice and deciding there was no functional need for a full-time worker to live on the application site, as cited in refusal reason 2, incurred unnecessary or wasted expense for the applicants. Accordingly, a partial award of costs is therefore justified on this matter. However, the Council's behaviour in respect of the financial soundness of the enterprise, including finding conflict with CBLP Policies DC3 and SP7 on that matter, were reasonable.

Costs Order

15. 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 Central Bedfordshire Council shall pay to Mr and Mrs M and L Stokes the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the functional need for a full-time worker to live on the application site; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicants are now invited to submit to Central Bedfordshire 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.

G Sylvester

INSPECTOR