The Planning Inspectorate

Costs Decision

Site visit made on 15 May 2017

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22nd May 2017

Costs application in relation to Appeal Ref: APP/H0738/W/16/3165126
Livery Stables Homefield Farm, High Lane, Maltby TS8 0BE
Grid Ref Easting: 446624, Grid Ref Northing: 513330

- 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 Snowdon for a full award of costs against Stockton-on-Tees Borough 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 planning permission for an equestrian workers dwelling.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and has thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The appeal was against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. The application was dated 19 August 2016 and registered by the Council on 1 September 2016. The statutory timescale for determination of the application was 8 weeks, and the time limit for determination given by the Council was 27 October 2016. The Council failed to make a decision on the application by that date.

4. As set out in paragraph 48 of the PPG, if it is clear that the local planning authority will fail to determine an application within the time limits it should give the applicant a proper explanation. It appears from the submitted correspondence that the first contact the Council made with the applicants was by email dated 25 October 2016, just 2 days before the expiry of the determination period, in reply to the applicants' letter of 7 October 2016 which responded to representations from residents and, although it had not been requested by the Council, provided accounting information in support of the application. The Council's email states that the planning officer was considering the application and looking at the appeal at Kirklevington Grange, and requested further accounting information. Although mentioned in the applicants' letter of 7 October, I note that the appeal at Kirklevington Grange

was originally referred to in the Planning Statement submitted with the application, and so was before the Council from the outset. Whilst the Council's email does request an extension of the determination period, it does not provide an adequate explanation as to why there had been significant delays in assessing the application, why, if it was necessary for the assessment of the application, the Council had not requested any accounting information earlier and why a request for additional accounting information was made at such a late stage in the 8 week timescale.

5. From the correspondence before me, it would appear that the applicants reacted to the Council's requests for additional information promptly and, by 14 November 2016, had provided a full response. I note that the letter from Northern Gas Networks is dated 13 September 2016, and yet the Council did not request information from the applicants on this matter until 25 November; the applicants responded the same day with the necessary information. By mid-December the Council had not determined the application, and the appeal against non-determination was submitted on 12 December 2016.

6. Paragraph 48 of the PPG states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. The PPG further advises that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

7. Furthermore, paragraph 49 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by 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. The PPG also states that if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn.

8. Following the submission of the appeal, the applicants submitted a second, identical, application to the Council (Ref 16/3149/REV). On 7 February 2017, some 8 weeks after the submission of the appeal and second application, the Council granted planning permission for the second application subject to a number of conditions. I note that at this point the applicants had prepared and submitted a Statement of Case and draft Statement of Common Ground and had made arrangements for witnesses to attend the scheduled Hearing. Because Condition 4 of permission Ref 16/3149/REV withdraws a number of permitted development rights, and this was a matter of dispute between the parties, the applicants did not withdraw the appeal.

9. As set out in paragraph 49 pf the PPG, behaviour which may give rise to a substantive award of costs against a local planning authority includes imposing

a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations.

10. I have allowed the appeal and, although in my Appeal Decision I conclude that there are exceptional circumstances which justify the removal of permitted development rights under Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), there is nothing in the submitted evidence which leads me to conclude that the withdrawal of permitted development rights under Classes B, C, D, E and F is necessary.

11. All in all, based upon the evidence before me, it appears that there were no substantive reasons to justify delaying the determination of the application which is the subject of the appeal, and better communication with the applicants may have enabled the appeal to be avoided altogether. I find no evidence of unreasonable behaviour on the part of the applicants; requests from the Council for additional information were responded to in a full and timely manner. The Council subsequently granted planning permission for a second identical application. The evidence base of this application did not change, and the scheme was not in any way amended. I therefore conclude that the Council delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Moreover, I conclude that the blanket withdrawal of permitted development rights under Schedule 2, Part 1, Classes A – F which, following the grant of planning permission for the second application, remained the sole point of dispute between the parties in the appeal, was not necessary and failed to comply with guidance set out in the Framework and PPG.

Conclusion

12. For the reasons set out above I 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 the Stockton-on-Tees Borough Council shall pay to Mr and Mrs Snowdon the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Stockton-on-Tees Borough 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.

CL Humphrey

INSPECTOR