The Planning Inspectorate

Costs Decision

Site visit made on 13 October 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2020

Costs application in relation to Appeal Ref: APP/B3438/W/20/3256189
Land at, Mollatts Wood Road, Leek ST13 7AL

- 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 N Chattaway for a partial award of costs against Staffordshire Moorlands District Council.
- The appeal was against the refusal of planning permission for construction of a new two storey dwelling.

Decision

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

Reasons

2. The Planning Practice Guidance 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 application for a partial award of costs is on the basis that the Council acted unreasonably on procedural and substantive grounds, relating to the appeal process and the planning merits of the appeal respectively.

4. In terms of the former, the PPG advises that examples of unreasonable behaviour which may result in an award of costs include, but are not limited to, lack of co-operation with the other party or parties; and delay in providing information or other failure to adhere to deadlines. In terms of substantive grounds, the applicant suggests that the grounds for the Council's second reason for refusal make inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. Moreover, the applicant claims that the Council has also failed to produce evidence to substantiate the reason for refusal and therefore prevented or delayed development, which should clearly be permitted. The applicant also submits that the Council has acted unreasonably in that it did not determine similar cases in a consistent manner, with particular reference to the grant of permission of a dwelling at The Stables.

5. Firstly, in respect of procedural matters, the Council's Statement confirmed that they would be relying on Staffordshire County Council's (SCC) statement to defend their second reason for refusal. However, in presenting their case, neither of the Councils reviewed the applicant's Highways Statement (HS) and instead focused on the applicant's Statement of Case. However, this clearly references the HS and identifies that the reader should refer to it in full.

6. The Council has subsequently accepted that they were aware that the HS was not published on their website until 14 September 2020 and, while representatives of the Councils discussed this matter, it was too late for SCC to amend their Statement.

7. There were clearly some communication issues between the Councils in respect of the availability of the HS. Despite the implications of staff being on leave and COVID-19 on working patterns, lines of communication would have been available between the Council's planning representatives and their highways counterparts at SCC to seek to resolve this matter.

8. The Council has accepted that it should have taken further action and requested an extension of time from the Planning Inspectorate, but they did not and neither did they respond to the email from the applicant's agent of 24 September 2020, which sought to address this matter. The Council only sought to take further action on 6 October 2020, in response to this application for costs, at which point they requested further time to respond to the HS. However, in the interests of fairness to the appellant, this request was not allowed. The Council also did not provide the appellant with their Questionnaire or supporting documents until 16 September 2020, over four weeks following the 17 August 2020 deadline set out in the appeal Start Letter.

9. Having regard to the above, it is clear that the Council acted unreasonably, in that it did not cooperate with the applicant or SCC to address the issues relevant to their case presented for the second reason for refusal, and unnecessarily delayed the appeal process by not providing information to the applicant in a timely manner.

10. Turning to the planning merits of the appeal, the substantive matters, I have already referred to the fact that neither of the Councils reviewed the HS. In presenting their case, the Council did not therefore have regard to the applicant's position in relation to the impact of the development on highway safety.

11. Even with the uncertainty surrounding the number of journeys already made to the appeal site, the Council's case did not include any substantive evidence of existing safety hazards associated with Mollatts Wood Road or its access, nor the impact of the traffic associated with the proposal on highway safety. Moreover, the Council relied upon vague assertions about the impact of the proposed development, without substantiating their reasoning, particularly in light of the case presented by the applicant in respect of the impact on highway safety.

12. Given my findings in the main decision, while the appeal did not succeed, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should not have been refused permission on the grounds advanced in the second reason for refusal. The refusal of planning permission by advancing incorrect assertions about the proposal's impact therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG.

13. Notwithstanding the above, it does not appear that the Council has been inconsistent in its decision-making. Moreover, the case at The Stables, referred to in my main decision, was for the replacement of existing stables with a new

house. While I did not find against the appeal scheme in respect of highway safety, I did refer to the uncertainty in relation to the number of journeys already made to the appeal site. In the case of The Stables, the Council was presented with evidence of regular visits to tend to animals on a daily basis. Therefore, in this regard, the Council had legitimate grounds to come to a different conclusion on the impact of existing traffic utilising Mollatts Wood Road.

14. Despite my findings in relation to determination of other similar applications, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated on procedural and substantive grounds. Moreover, the aspect of the appeal relating to the second reason for refusal was unnecessary and the preparation of evidence to support the appeal in this respect is likely to have led to unnecessary expense, particularly in respect of the expert advice contained in the Highways Statement and rebuttal of the Council's case. Furthermore, the Council unnecessarily delayed the appeal by not providing information or cooperating to address issues that arose during the course of appeal proceedings. A partial award of costs is therefore justified.

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 Staffordshire Moorlands District Council shall pay to Mr N Chattaway, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Staffordshire Moorlands District 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.

Paul Thompson

INSPECTOR