The Planning Inspectorate

Costs Decision

Hearing held on 20 March 2012
Site visit made on 20 March 2012

by J I McPherson JP BSc CEng CEnv CWEM MICE MCIWEM MCMI

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

Decision date: 23 March 2012

Costs application in relation to Appeal Ref: APP/H1033/A/11/2166653
149 Long Lane, Charlesworth, Glossop, SK13 5ES

- 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 D Stewart for a full award of costs against High Peak Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a replacement dwelling.

Decision

1. The application for an award of costs is refused.

The submissions for Mr D Stewart

2. After a previous refusal of planning permission for a larger development, the Appellant went to great trouble to negotiate an acceptable scheme. After a number of meetings and discussions, the Alliance Design Review Panel and two Council officers were satisfied with the design. At the end of the 8 week period after submission, the Appellant was led to believe that he had an agreed solution and that the positive feedback received from the case officer would translate into a planning permission. Indeed the case officer's report recommended in favour of the proposal but was then overturned by a more senior officer for unsubstantiated reasons.

3. The handwritten note on the report overturning the recommendation was entirely vague and generalised and therefore amounted to unreasonable behaviour of the kind said in paragraph B18 of Circular 03/2009 to be likely to lead to the award of costs.

4. Because there was no substantiated reason for refusal, the Appellant was put to the unnecessary expense of the appeal, at which he was professionally represented, and for which a full award of costs should be made.

5. In the event that a full award of costs is not made, a partial award should be made for the unnecessary cost involved in refuting the Council's evidence on saved Local Plan Policies OC1 (Countryside) and OC3 (Special Landscape Area). These policies were not included in the reasons for refusal and were only introduced at a late stage to bolster the Council's case in their appeal statement.

6. Paragraph B4 of Circular 03/2009 specifically identifies the introduction of new evidence as unreasonable behaviour. Paragraph 10 of the Planning

Inspectorate's Good Practice Advice Note 10 also warns that this action may result in an award of costs.

The response by High Peak Borough Council

7. Regardless of the pre-application discussions, the Council had sound reasons for the decision to refuse planning permission for a development that would not be in accordance with the Development Plan.

8. These reasons were clearly set out in the notice of decision and specifically paragraphs 5.1-5.7 of the Council's appeal statement outline why the scheme was considered inappropriate for the site. The Council did not therefore fail to substantiate the reasons for refusal.

9. The Council did not introduce additional information at the appeal stage. Policies OC1 and OC3 were included within the list of relevant policies on the decision notice and were not therefore new evidence.

10. No award of full or partial costs is therefore justified.

Reasons

11. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.

12. It is recommended that applicants for planning permission should discuss their proposals with the relevant Council in advance of submitting an application, as was done in this case. Nevertheless, whatever the outcome of that consultation and the officer's recommendation, there is no guarantee that planning permission will be granted. As noted in paragraph B20 of Circular 03/2009, planning authorities (in this case a senior officer acting under delegated powers) are not bound to accept the recommendations of their officers.

13. As noted on the officer's report, the decision of that senior officer clearly says that the replacement dwelling would be materially larger than the existing dwelling and therefore inappropriate development in the Green Belt. It goes on to conclude that there are no very special circumstances of sufficient weight to justify an approval. It also concludes that this decision is in accordance with the development plan for the area. This can hardly be considered vague or generalised reasoning. Very much the same reasoning was carried through into the reasons for refusal on the decision notice, and again in the Council's hearing statement which adequately substantiated the reasons for refusal. In respect of the reasoning for the decision and its substantiation at appeal, there was no unreasonable behaviour by the Council and therefore no reason to make any award of costs on this basis.

14. The Local Plan Policies OC1 and OC3 are not referred to in the reasons for refusal, but they are listed among the relevant policies in both the officer's report and on the decision notice. Therefore they are hardly 'entirely' or 'wholly' new evidence of the kind envisaged in paragraphs 1 and 3 of the PINS advice note. Paragraph B4 of Circular 03/2009 refers to 'fresh and substantial' evidence necessitating an adjournment or extra expense for preparatory work that would not have arisen. Whilst not included in the reasons for refusal the

Council's reference to these policies in their statement was not therefore unreasonable behaviour.

15. Even if such action had been considered unreasonable, a planning professional could readily deal with these secondary considerations without the need for any substantial additional work, and there was certainly no need for an adjournment, as envisaged in paragraph B4 of the Circular.

16. Accordingly, there is no justification for either a full or partial award of costs.

J I McPherson

Inspector