The Planning Inspectorate

Costs Decision

Site visit made on 16 April 2012

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 4 March 2013

Costs application in relation to Appeal Ref: APP/H1033/D/12/2172243
Sylvandale Farm, Woodseats Lane, Charlesworth, Derbyshire SK13 5DS

- 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 Nigel Hackney for a full award of costs against High Peak Borough Council.
- The appeal was against the refusal of planning permission for a pitch roof to replace flat roof area on existing house, including extending gable walls to new roof line.

Decision

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

The submissions by the parties

2. The appellant's application for an award of costs was submitted in writing during consideration of the appeal, which was determined on 30 April 2012. Owing to an administrative oversight, the Council's written reply to the application and the appellant's further response were not obtained until some considerable time after that date, in January 2013.

Reasons

3. Circular 03/2009[1] 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.

4. The application is based on two grounds: that the Council did not engage with the applicant during the planning application procedure to explain the nature of any objections and that the reasons for refusal of the planning application were not sufficiently clear or detailed.

Engagement with applicant

5. The applicant explains that, following pre-application discussion, the planning application was accompanied by a letter that sought to address the Council's likely objections. His primary concern is that the letter was not responded to by the Council during the application process and that his agent was informed during a subsequent telephone call that the application would be refused, but without giving reasons.

[1] CLG Circular 03/2009: Costs awards in appeals and other planning proceedings

6. The costs application refers to paragraph B29 of the Circular, which advises that a planning authority may be at risk of costs for '*unreasonably refusing to enter into pre-application negotiations… or to provide reasonably requested information, when a more helpful approach would probably have resulted in the appeal being avoided altogether.*'

7. In this case, it is common ground that there was a pre-application discussion. The supporting letter specifically addresses itself to the likely objections arising from that discussion.

8. The letter also refers to two previous letters from the Council, copies of which were provided with the Grounds of Appeal. Both of these letters contain pre-application advice in respect of proposed re-roofing of the house, albeit in response to earlier proposals. The second letter, dated 30 July 2007, sets out detailed advice following refusal of a previous planning application, in order to assist preparation of an alternative proposal.

9. It appears therefore that that there has been a consistent willingness by the Council to provide pre-application advice, which was carried through in the run-up to the appeal application.

10. The supporting letter accompanied the application effectively as a statement of justification for the proposal, and does not actually request a reply or the re-opening of negotiations. The Council confirms that the content of the letter was taken into account in the consideration of the application. Such supporting information is part and parcel of the application process, and does not of necessity demand a specific reply.

11. Planning authorities are under pressure to meet targets in the determination of planning applications. Had there been scope to secure an amendment to the proposal that might have allowed a positive recommendation within the required timescale, then the Council might have been unreasonable in not seeking to negotiate. This would be in accordance with the guidance of paragraph 187 of the National Planning Policy Framework that planning authorities should look for solutions and work proactively with applicants. However, there is no evidence that in the particular circumstances of this case such an amendment would have been feasible, and the authority had already outlined its concerns in advance.

12. The precise content of any telephone contact between the Council and the applicant's agent is not agreed. But it seems more likely that both sides would have understood that the Council's intention to refuse the application would be based on known concerns, rather than on unidentified objections. It is notable that the call was not followed by any electronic or written request for further elaboration or negotiations.

13. However, even had the agent received a full account of the Council's objections, it is not clear how this would 'probably have resulted in the appeal being avoided altogether' in the terms of paragraph B29. The Council's concerns related to fundamental Green Belt principles as well as to the proposal's effect on the character and appearance of the building and of the wider area. The application was submitted in the knowledge of the Council's likely objection: there was always a strong probability of the need to appeal.

14. I conclude on this issue that unreasonable behaviour resulting in unnecessary expanse has not been shown.

Reasons for refusal

15. The costs application refers to paragraph B16 of the Circular, which advises that '*The planning authority's decision notice should be carefully framed and should set out in full the reasons for refusal. Reasons should be complete, precise, specific and relevant to the application.*'

16. The planning application was refused for two reasons, the first relating to the Green Belt and the second to the character and appearance of the building and of the surrounding Special Landscape Area. Both reasons make clear that the Council's concerns arose from the form, scale and appearance of the proposed alteration. The terms of the reasons cannot be classed as 'general or generic', as claimed in the costs application. The appellant could not be said to have had to guess the nature of the Council's objections.

17. Each reason related to separate polices of the development plan, the supporting text to which would have provided background reasoning to assist in the interpretation of the policy and hence the framing of an appeal.

18. I conclude on this issue that the reasons for refusal complied with the guidance of the Circular and that unreasonable behaviour resulting in unnecessary expanse has not been shown.

Other matter

19. The Council has raised concern about the possible effect of the delay in consideration of the costs application, as outlined at paragraph 2 above. As all costs decisions are made after the substantive appeal decision, although often issued concurrently, the consideration of this costs application has not differed from any other and has been entirely in accordance with government guidance. The delay has had no bearing on the outcome.

Conclusion

20. For the reasons set out above, and having taken full account of all representations made, I conclude that the costs application must be refused.

Brendan Lyons

INSPECTOR