The Planning Inspectorate

Costs Decision

Site visit made on 22 August 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 18 October 2017

Costs application in relation to Appeal Ref: APP/M2325/W/17/3176657 Quernmore Industrial Estate, Croft Butts Lane, Freckleton, Preston Lancashire PR4 1RB

- 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 Steven Norwood for Applethwaite Ltd for a partial award of costs against Fylde Borough Council.
- The appeal was against the refusal of planning permission for the demolition of existing buildings and the erection of 10 bungalows.

Decision

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

Reasons

2. 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. Paragraph 49 of the PPG sets out examples of unreasonable behaviour by local planning authorities. These 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 consideration and failure by the planning authority to provide reasonably requested information when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues being considered being narrowed.

4. The appellant states that the Council has behaved unreasonably on two grounds. Firstly, the Council did not identify that the absence of affordable housing provision would be raised as a reason for refusal until very late during the application period. It is argued that despite requesting the relevant information, no explanation was provided as to the authority's reasoning until after the application had been determined. Furthermore, no copy of the recommendation to refuse the scheme for reasons relating to affordable housing was provided to the appellant and this was still the case at the time of making the appeal.

5. The Council argues that officers were trying to work with the appellant's agent to resolve matters relating to the first reason for refusal and for which the appellant refused to amend the scheme. Furthermore, the Council states that if the proposed development had been amended as per the Council's request, then a legal agreement would have been agreed prior to issuing the Council's decision which would have covered the required contributions relating to public open space and affordable housing. As the application was refused and there was no agreement in place, the Council imposed the second reason for refusal.

6. Having had regard to the above, I find that the Council was partially at fault with regard to a lack of communication with the appellant in relation to its second reason for refusal. This matter should have been raised with the appellant much earlier in the application process in order to provide the opportunity to resolve any difficulties prior to the application being determined. However, although this matter was identified late in the process, I note the Council's argument that officers were focussed on resolving the other substantive issue relating to the layout and design of the proposal, for which some difficulty was experienced. Furthermore, I find that the outcome of the first reason for refusal would, in the Council's view, have had some bearing on the second reason for refusal.

7. The Council could have dealt with the application process more efficiently and effectively. Nonetheless, I find that the Council was reasonable in its approach to determining the appeal in that officers sought to resolve principal issues regarding the acceptability of the proposal visually. In the absence of any agreement on these issues, and having regard to the Council's position on affordable housing site thresholds, the lack of a necessary legal agreement to provide affordable housing was, in my view, justifiably considered as a contributing factor for the use of the second reason for refusal. Therefore, in this regard, I find that the Council has not acted unreasonably and did not cause any unnecessary or wasted expense.

8. The second ground relates to the Council refusing planning permission contrary to national policy and guidance, the Written Ministerial Statement of 28 November 2014 and the PPG, and not providing justification or reasoning for doing so. Furthermore, the appellant states that the Council relies solely on an untested policy, Policy H4 of the Submission Version Fylde Local Plan to 2032 (Submission LP), as the basis for its decision.

9. The Council argues that the matter between the parties is one of a differing interpretation of policy. As such, this cannot be considered to be unreasonable behaviour. The Council refers to the DCLG Starter Homes Regulations (Technical consultation) which proposes that the requirement for affordable homes applies to sites which meet varying criteria, including 10 units or more, stating that this would align with the planning definition of major development. Furthermore, the Housing White Paper 'Fixing our broken housing market', published 7 February 2017 makes reference to a site threshold of 10 or more units for affordable housing contributions. I note also the Council's reference to the results of consultation on the draft Policy H4 and that the indicated threshold of 10 units on a site for affordable housing was not challenged.

10. Notwithstanding the above, I find that due to its stage in the plan-making process, Policy H4 of the Submission LP has less weight than current local and national policies and guidance. I appreciate the Council's approach to assessing the proposal against emerging policy and the other identified sources. However, such considerations do not outweigh national planning policy and guidance. Whilst the Council argues that the disputed matter is based on differing interpretations of policy, it is evident that an untested, draft planning policy holds less weight than the relevant content of the National Planning Policy Framework and Planning Practice Guidance. As such, with regard to the applicant's second ground, I find that the Council's approach was unreasonable and unjustified.

11. Therefore, in that regard, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercising 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 Fylde Borough Council shall pay to Mr Steven Norward for Applethwaite Ltd 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 as set out above. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Fylde Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement to the amount.

Andrew McCormack

INSPECTOR