The Planning Inspectorate

Costs Decision

Site visit made on 10 January 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 30th January 2017

Costs application in relation to Appeal Ref: APP/P1425/W/16/3154832
Bineham Park Farm, Lewes, North Chailey, East Sussex BN8 4DD

- 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 Stuart Vaughan for a full award of costs against Lewes District Council.
- The appeal was against the refusal of a refusal to grant approval required under the *Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (the GPDO)* for a development described on the appeal form as *'agricultural improvement under Part 6 of the GPDO comprising the excavation of soil and importation of clean subsoil to slightly raise ground levels and reprofile to improve drainage'*.

Decision

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

Reasons

2. The application for costs was made and responded to on the basis of the national *Planning Practice Guidance* (the Guidance). The Guidance, advises that costs may only be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. In this case, the applicant considers that the appeal was unnecessary as approval was given on 15 January 2016, and then the Council purported to refuse permission on 19 January 2016 indicating, amongst other things, that the proposal was a county council matter. Since then the Council has raised additional concerns. In addressing these concerns, the applicant considers that they have suffered from both further costs in the preparation of information and the inability to implement the permission they consider was approved on 15 January 2016. What is more, they consider that there has been reluctance on the part of the Council to engage in meaningful dialogue with them adding further expense. In the applicant's view the Council has also failed to explain why a scheme at Bonner's Farm was approved, but this scheme was not, even though there were similarities in the schemes.

4. The Guidance gives various examples of where an award of costs may be made against a local planning authority (LPA), which includes, amongst others; *a lack of co-operation with the other party; delay in providing information or other failures to adhere to deadlines; pro-longing the proceedings by introducing new evidence; refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would*

probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal; or not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

5. In this case, the LPA issued a letter on the 15 January 2016, which indicated that if no further correspondence was provided by 29 December 2015, then the applicant could *'carry out the work without further notice'.* Wisely, given the email of 20 January 2016, (where the LPA essentially changed its position), the appellant did not implement the permission they reasonably considered existed under the GPDO.

6. The appeal decision has found that the scheme does not benefit from permitted development rights for the reasons given, which I will not repeat here. Needless to say, it is somewhat strange that the LPA issued the 15 January 2016 letter, which reads more as a validation letter rather than a formal decision, when it related to a target date that had already past. One would normally expect the cart before the horse, so to speak. This has then created further confusion by the LPA refunding the application fee in April 2016, as they considered the application to be invalid.

7. Nevertheless, an appeal had been lodged, and both parties have sought to address concerns this raises. However, the proper time for the LPA to have raised these concerns was at the validation stage, ***not*** two weeks or so after the expiration of the 28 day determination period. In behaving in a seemingly erratic behavior – for example a decision being issued then apparently changed, then introducing new reasons and concerns – I find that the LPA did act unreasonably in this case on issues such as these.

8. Yet, the fact remains that the scheme did not benefit from being a permitted development and the efforts the appellant has made in collating further reports and studies could reasonably inform any future requirements for permission or consent. With such apparent adaptability, this work does not appear to have been in vain nor has it resulted in unnecessary or wasted expense on the part of the appellant. What is more, the LPA has proactively taken part in the appeal process by addressing the various planning points raised by the applicant and by submitting documentation within the timetable set by the Inspectorate.

9. When taken as a whole, whilst I find that the initial handling of the appeal scheme by the LPA was less than adequate, I do not find that this resulted in unnecessary or wasted expense on the part of the applicant. I therefore find that the unnecessary or expense in the appeal process, as described in the Guidance, has not been demonstrated in this instance.

Cullum J A Parker

INSPECTOR