



Costs Decisions

Hearing held on 5 May 2016 and 28 June 2016

Site visit made on 28 June 2016

by **J Dowling BA(Hons) MPhil MRTPI**

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

Decision date: 27 September 2016

Costs application in relation to Appeal Ref: APP/X1925/W/15/3132907 Fairhaven Farm, Slip Lane, Old Knebworth, Herts SG3 6QG (Cost application A)

- 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 and Mrs Kevin and Linda Smith for a full award of costs against North Hertfordshire District Council.
 - The hearing was in connection with an appeal against the grant subject to conditions of planning permission for removal of condition 3 contained within formal decision to quash enforcement notice and grant planning permission in allowing Appeal E (appeal No APP/X1925/C/03/1121079) by G B Bailey MRICS, an Inspector appointed by the First Secretary of State.
-

Costs application in relation to Appeal Ref: APP/X1925/W/15/3132907 Fairhaven Farm, Slip Lane, Old Knebworth, Herts SG3 6QG (Cost Application B)

- 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 North Hertfordshire District Council for a full award of costs against Mr and Mrs Kevin and Linda Smith.
 - The hearing was in connection with an appeal against grant subject to conditions of planning permission for removal of condition 3 contained within formal decision to quash enforcement notice and grant planning permission in allowing Appeal E (appeal No APP/X1925/C/03/1121079) by G B Bailey MRICS, an Inspector appointed by the First Secretary of State.
-

Costs application in relation to Appeal Ref: APP/X1925/W/15/3141573 Fairhaven Farm, Slip Lane, Old Knebworth, Herts SG3 6QG (Cost Application C)

- 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 North Hertfordshire District Council for a full award of costs against Mr and Mrs Kevin and Linda Smith.
 - The appeal was lodged against the failure to give notice within the prescribed period of a decision on an application for planning permission for the erection of an agricultural building incorporating extension to bund and re-siting of Barn A at Fairhaven, Gipsy lane, Knebworth, Herts, SG3 6DJ.
-

Decision

1. Costs application A and B are refused and costs application C is allowed in the terms set out below.
-

Reasons

2. National Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. Claims can be procedural – relating to process; or substantive – relating to the issues arising from the merits of the appeal.
3. The application (cost application A) made by the appellant is on a substantive basis in that the conditions attached to the planning permission did not meet the test for conditions as set out in paragraph 206 of the National Planning Policy Framework (the Framework) or the specific test for the removal of Permitted Development rights through conditions as set out in the PPG.
4. As laid out in my Decision whilst I have concluded that Condition 1 would not meet the test for conditions and should not have been imposed, the Council were right to impose Condition 2. Whilst I agree that the Council acted unreasonably in imposing condition 1, I do not consider that this unreasonable behaviour has caused the appellant to incur unnecessary or wasted expense in the appeals process as the evidence submitted by the appellant was similar for both conditions and on the basis of the evidence before me I consider that the appellant would have appealed condition 2 in any event.
5. The applications (cost applications B and C) made by the Council are on a procedural basis. In the case of cost application B this is that due to the failure of the appellant to ensure that they were professionally represented the Hearing had to be adjourned. As a result the Council has incurred the cost of having to attend for an additional day. Secondly, until the first Hearing date the Council were not aware that the appellant was appealing both condition 1 and condition 2 and therefore had only prepared evidence in relation to condition 1. As a consequence they needed to undertake additional work to reconsider their statement to see if it needed to be updated to cover condition 2 (cost application B). Cost application C has been made as a result of the late withdrawal of appeal ref APP/X1925/W/15/3141573 which meant that the Council had already incurred the expense of preparing the evidence in relation to this appeal (cost application C).
6. At the hearing on the 5 May 2016 the appellant advised that their professional advisor could not attend as they were at a family funeral. This was confirmed by Mr Ivory at the subsequent hearing on 28 June 2016. In the absence of his advisor Mr Smith did try to represent himself. However, it became evident at an early stage in the process that due to the complexity of the appeals and in the interest of fairness Mr Smith did need the benefit of professional advice and as a consequence I considered it necessary to adjourn the appeal. Whilst it is unfortunate that Mr Smith did not contact the Case Officer prior to the event to advise of the potential problem I do not consider that he acted unreasonably, given the timings involved and Mr Smith's wish to enable the Hearing to proceed.
7. Although the appeal form (section H) stated that the condition being appealed was condition 1, the appellants statement of case dated 30 December 2015 referred to both conditions and this information was available to the Council prior to the commencement of the Hearing. Therefore, the Council should have been aware that both conditions were the subject of the appeal. Whilst the Council took the opportunity afforded by the adjournment to reconsider their

- appeal statement they have acknowledged that their case for imposing condition 2 was covered by their original statement and therefore did not need to amend their statement. Whilst, the appellant could have made it clearer on the appeal form which conditions were to be appealed the Council have not incurred additional expense as their statement remained unchanged and as a consequence I do not consider that the appellant has acted unreasonably.
8. The appeal against Barn A was withdrawn by email on the 23 June 2016. At the Hearing the appellant cited the guidance contained within the PPG¹ that advises that an appellant should withdraw an appeal at the earliest opportunity if there is good reason to do so. Mr Ivory advocated that he had only been recently appointed by the appellant to deal with this appeal and had therefore only been able to advise them, in accordance with the PPG, to withdraw the appeal at a very late stage in the process. Furthermore, the appeal was against a failure to give notice within a prescribed period and therefore until Mr Smith received the Council statement Mr Ivory considered that Mr Smith would not have been in a position to understand the Council's case.
 9. The appellant lodged the appeal on the 12 December 2015. However, the Council submitted a report to the Planning Control Committee on the 17 December 2015 recommending a split decision and that the proposed agricultural building should be refused. Therefore the appellant would have been aware at a very early stage in the appeal process of the Council's position. With the exception of appointing Mr Ivory to provide advice on this appeal as well as the appeal against conditions there was no material change to the planning issues arising from the appeal while it was lodged and whilst withdrawing the appeal did ensure that time was not given over to it at the Hearing the Council had already undertaken the bulk of the work needed to prepare for the appeal. Therefore, I consider that the appellant did act unreasonably and whilst I acknowledge that Mr Ivory's late intervention did save time at the Hearing I consider that the Council's costs in defending the appeal were unnecessarily incurred and an award of costs is therefore justified.

Costs Order

10. 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 Mr and Mrs Kevin and Linda Smith shall pay North Hertfordshire District Council, the cost of the appeal proceedings described in the heading of this decision limited to the costs incurred in relation to preparing to defend Appeal reference APP/X1925/W/15/3141573.
11. The Council is now invited to submit to Mr and Mrs Kevin and Linda Smith, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jo Dowling

INSPECTOR

¹ Paragraph: 054 Reference ID: 16-054-20140306