
Costs Decision

Site visit made on 27 September 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 17 October 2016

Costs application in relation to Appeal Ref: APP/K0235/W/16/3152493 Land to the rear of 40 Churchill Close, Stewartby, Bedfordshire MK43 9LU

- 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 Flynn for a full award of costs against Bedford Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of three (3x) dwelling-houses and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. It goes on to point out that a local planning authority is at risk of an award of costs if they prevent or delay development which should clearly be permitted and if they fail to determine an application within the time limits where the appeal is allowed and there are no substantive reasons to justify delaying the determination.
 3. The appeal was made on 15 June 2016, some twelve weeks after the Council's target determination date for the application. Although the Council refer to correspondence with the applicant regarding conservation and trees issues these were in February and it is unclear why the Council did not subsequently reach a decision on the application, which under any circumstances appears to be a long period for the application to have been left outstanding.
 4. However, pre-application advice was provided to the applicant by the Council which concluded that an application for residential development would not be supported given its effect on the Conservation Area. Furthermore the applicant was advised that officers would be minded to refuse the application in May and whilst not in receipt of a formal decision the applicant must have been aware that there was a considerable risk that their proposal might be refused.
 5. The Council did set out full reasons why they considered that permission would not have been granted and, although it is not clear that they provided the applicant with a proper explanation of the delay at the time, they subsequently advised that the complexity of the case contributed to the delay.
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6. I cannot be absolutely certain that the applicant would have made an appeal had the Council made a decision. However, given that the application would, in all likelihood, have been refused had the Council been in a position to make a decision it is likely that an appeal, and the associated expense of making it, would have ensued in any event.
7. Given my findings on the appeal, the Council did not therefore prevent or delay development which should clearly be permitted nor did they fail to determine an application which has subsequently been allowed at appeal. Therefore, whilst the delay by the Council appears unwarranted and would no doubt have caused a sense of frustration on the applicant's part, their behaviour did not lead to wasted or unnecessary expense in making the appeal.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason an award of costs is not justified.

Geoff Underwood

INSPECTOR