
Costs Decision

Site visit made on 27 September 2016

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 18 October 2016

Costs application in relation to Appeal Ref: APP/T0355/W/16/3153088 The Garden Lodge, Bagshot Road, Ascot SL5 9JG

- 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 Alchemistico Ltd for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - 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 redevelopment of Orchard Cottage and Garden Lodge plots with one new dwelling in grounds of retained Garden Lodge.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the 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. The application was made on both procedural and substantive grounds.
 3. The PPG makes clear that if a planning authority fails to determine an application within the relevant statutory period then it should give the applicant a proper explanation why it has not reached a decision. I am not aware of any correspondence from the Council on this point, although the Council indicates that it had verbally advised the applicant's then agent of the likely determination.
 4. I appreciate that Council meeting cycles can mean that applications sometimes cannot be determined within the statutory period, but as the application was to be determined under the scheme of delegation, this did not apply. As such the failure to determine the application within the relevant statutory period without giving an adequate explanation represents unreasonable behaviour. However, this does not mean that there has been unnecessary or wasted expenditure.
 5. In this case the issues were relatively clear to the applicant as there had been a previous application, so the grounds of appeal were able to be focused on what would likely be the main issues. Although the applicant considered that the appeal should have been considered after a hearing, and thus drew up a draft Statement of Common Ground, this draft Statement allowed the parties to focus their representations and was not wasted.
-

6. There is no set format for a Council's statement and often, particularly when an application has been refused, this would be the officer's report on the application, sometimes with an additional short response to the grounds of appeal. That the Council chose to produce its statement in similar format to an officer report was a matter for it and I consider that this did not disadvantage the applicant. That it provided documentation outside what the applicant considered the main issues in dispute shows a comprehensive approach, and, as can be seen from my decision letter, the information on the effects of the development on the Thames Basin Heaths Special Protection Area was highly pertinent.
7. The consultation response of the Council's tree officer at the application stage states that a full tree survey needed to be submitted, when one was included within the Design and Access Statement submitted with the application. Not considering the information provided is unreasonable behaviour. However, there was a subjective judgement to be made as to whether building within the Root Protection Areas of protected trees was appropriate, given the default position in BS 5837:2012 "Trees in relation to design, demolition and construction – Recommendations" that structures should be located outside the RPAs of trees to be retained. While the appellant has referred to obtaining further specialist advice from their own arboricultural advisor I have not found any work beyond the information that had previously existed or would have been needed had the matter been considered properly.
8. While paragraph 187 of the National Planning Policy Framework does encourage local planning authorities to work proactively with applicants this has to be read in the context of local authority workloads and making a beneficial use of Council time. Given the areas of difference between the parties I am not convinced that discussions would have resulted in a scheme within the terms of the application which the Council would have been able to approve. In any event, as the applicant acknowledges, the costs regime does not deal with expenditure at the application stage, see PPG reference ID: 16-033-20140306.
9. Overall, that while aspects of the Council's behaviour were unreasonable I have been unable to identify any unnecessary or wasted expense that was caused by that behaviour.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

RJ Jackson

INSPECTOR