

Costs Decision

Site visit made on 17 August 2016

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 24th October 2016

Costs application in relation to Appeal Ref: APP/J0405/W/16/3147873 Oakwood Farm, Ledburn, Mentmore, Buckinghamshire LU7 0QD

- 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 Greybird Solutions Limited for a full award of costs against Aylesbury Vale District Council.
 - The appeal was against the refusal of the Council to grant planning permission for storage and distribution of plant, machinery and parts.
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Decision

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

Procedural Matter

2. For brevity I have reduced the description given on the application form to that given in the heading above.

Reasons

3. The national 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.
 4. The appellant applied for permission to erect a building for storage and distribution on land with an extant permission for the construction of an agricultural building. The Council's reasons for refusal referred to the adverse effect of the development on highway safety, and the limited access to sustainable modes of transport.
 5. The appellant submitted a cost application in writing. In this it was suggested that the Council had acted unreasonably in relation to procedural and substantive matters. The Council has failed to provide a rebuttal of the costs application.
 6. With regard to procedural awards, the PPG states that a delay in providing information or other failure to adhere to deadlines may represent unreasonable behaviour likely to result in an award of costs. The appellant's evidence indicates that the planning application was validated on 22 September 2015, with an original determination date of 6 November 2015. The appellant monitored the responses to the application subsequent to its validation, and on 26 October 2015 contacted the Council to query the lack of response from
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- Buckinghamshire County Council (BCC) and to suggest that an extension of time might be appropriate if BCC required further information.
7. On 23 November 2015 the Council advised the appellant that BCC had not in fact been consulted, and that a further period of three weeks from that date was required to allow them sufficient time to respond; the revised determination date would therefore be 18 December 2015.
 8. On 11 February 2016, more than four months after validation of the application and with no response from BCC, the appellant advised the Council that the application would be appealed on the grounds of non-determination if a response from either the Council or BCC in respect of highway concerns was not received the following day.
 9. The highways response from BCC was received on 12 February 2016 but raised objections to the development. A further extension of time was agreed, to 4 March 2016, to enable the appellant to respond to BCC's concerns. The appellant agreed to this revised date although noted that if there was further delay in the response time from BCC, the revised determination date might not provide sufficient time to resolve outstanding issues before the Council made their decision. There followed further communication between the main parties; the appellant considered BCC's objection to be unsubstantiated and the Council wished to await a further and final response from BCC before determination.
 10. The application was refused on highway grounds on 24 March 2016. Although updated comments from BCC were received by the Council on 18 March 2016, and upheld BCC's objection to the development, they were not forwarded to the appellant. Although the Council states the BCC comments were available through public access, the appellant maintains there was notification of their receipt by the Council and consequently no opportunity to respond prior to the application's determination.
 11. The Council omitted to consult with a statutory consultee, and when the lack of comment from BCC was raised by the appellant, the Council did not consult with BCC until a further month had elapsed, leading to further delay. Furthermore, when BCC were asked to comment on the application, in late November, their response was not issued until mid-February. Throughout the procedure the Council has appeared unprepared to determine the application without BCC's guidance. However, the PPG notes that statutory consultees should be aware that should they fail to respond within a specified time period, a local planning authority may proceed to decide the application without their advice so I am not persuaded that the lack of response from BCC accounts for the significant delay in determination of this application.
 12. Consequently, I conclude that the Council has acted unreasonably through failure to carry out its own procedures, causing delay in providing information and failure to adhere to deadlines. In addition, I consider the Council has demonstrated a lack of cooperation with the appellant through not forwarding the final BCC comments, particularly given the prior and regular correspondence with regard to those highway comments.
 13. However, whilst I agree with the appellant that the Council and BCC have not provided a reasonable explanation to explain the procedural delays, I disagree with the appellant that BCC has provided vague and contradictory claims.

BCC's letter of 12 February 2016 raises concerns in respect of the highway network to the west of the site, and that the site is remote from public transport links, and their letter of 18 March 2016 outlines the situation with regard to the potential traffic movement associated with the extant permission and the proposed use of the site, and also considers the sustainability issue by reference to the planning balance to be undertaken by the Council. The Council and BCC are entitled to maintain their difference of opinion with the appellant. That I have concluded in favour of the development does not alter my reasoning in this regard.

14. As such, despite the delays, I consider BCC did provide the Council with genuine concerns and I have had to take those concerns into consideration, in order to reach my decision. Therefore an appeal was a likely consequence of the Council's refusal of the planning permission.
15. Consequently, although I have found that the Council has acted unreasonably with regard to procedural matters, I do not find that this behaviour has caused unnecessary or wasted expense. As such, an award of costs is not justified.

Amanda Blicq

INSPECTOR