
Costs Decision

Site visit made on 3 October 2016

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 23 November 2016

**Costs application in relation to Appeal Ref: APP/W0910/W/16/3152134
The Caravan, Henning Wood, Lindal-in-Furness, Cumbria LA12 0LT**

- 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 G Miles for an award of costs against Barrow-In-Furness 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 the siting of caravan ancillary domestic use (retrospective) (re-submission).

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 20 October 2016.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. For an application for costs to succeed, an applicant will need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The PPG further states that, if the local planning authority fails to determine an application within the time limits, it should give the applicant a proper explanation and that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and what decision would have been reached had the application been determined within the relevant period. If an appeal in such cases is allowed the local planning authority may be at risk of an award of costs, if there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
4. The appellant submits that the Council has acted unreasonably on two grounds. Firstly, in the handling of the previous application for a similar scheme¹ which was refused planning permission and secondly in the handling and non-determination of the subsequent application, which is the subject of the appeal.

¹ Council reference B18/2015/0292

5. From the appellant's evidence I note that the initial application was refused planning permission in July 2015 on the basis that the application was for a new independent residential caravan, rather than for additional accommodation ancillary to the main residential caravan.
6. It was unfortunate that the Council seemed to misunderstand the nature of the application and consequently refused it. Nevertheless, the appellant chose to submit a second application rather than appeal against the refusal of planning permission where the merits or otherwise of the Council's actions could have been explored, possibly with an associated costs application at that stage. Therefore, the first application has very limited relevance to this costs application. Moreover, I do not have details of the first application and I note the appellant's agent acknowledges that the details of the second application were articulated more clearly. Consequently, I consider that in any event the circumstances surrounding the first application do not demonstrate that the Council behaved unreasonably.
7. With regard to the second application which is the subject of this appeal, it was dated 2 December 2015 and the Council's Planning Committee report indicates that it was received on 18 December 2015 giving a statutory target date for determination of 11 February 2016. The Council say that early on in the process a site visit was carried but because nobody at the site had the keys to the caravan subject of the application another site visit had to be arranged. It is not clear what toing and froing there may have been between the Council, applicant and the agent to sort this out but the Council emailed the agent on 29 January 2016 seeking a date when the site visit could take place.
8. For whatever reasons the visit did not take place until 16 February 2016. Although this was after the targeted determination date, it does seem that at least in part the delays were as a result of the Council being unable to secure a date with the appellant's agent to undertake the site visit. Consequently, it was probably too late to then take the application to the Council's Planning Committee on 8 March 2016. While these circumstances and the slow progress made are regrettable, they do not up to this point necessarily show unreasonable and uncooperative behaviour by the Council.
9. Following the site visit the Council considered it necessary to seek legal advice. On 23 March 2016 the agent contacted the Council for an update and it was not until three weeks later on 15 April 2016 that the Council replied saying that it had only just received the legal advice. Whilst I recognise that the Council may be small and it does not now employ an in-house legal team there is little by way of explanation to justify why it took just under two months to obtain the legal view. The delivery of such information is a matter for the Council to manage and this should take account of the need to make timely determinations of applications. Although the Council says that the agent was kept informed about this delay, there is no evidence of this.
10. On 3 May 2016 the agent again contacted the Council for an update and he was advised that it was intended to report the application to the Planning Committee due on 14 June 2016. However, it was not then until 20 May 2016 that the Council enquired how the caravan was being used as an ancillary unit apparently based on concerns that it may not have been used for ancillary purposes. Bearing in mind that the legal advice was received on 15 April 2016 there is nothing to explain what happened over the intervening approximately

- five weeks up until the 20 May 2016 if indeed there was a concern about the use of the caravan which probably arose when the site was visited about 3 months before. It seems then that discussions between the case officer and her manager, and a period of holiday absence, led the application not to be reported to the Planning Committee held on 14 June 2016.
11. It is apparent from the above that it took from around the middle of February 2016 when the legal advice was first sought to about the middle of June 2016, a period of four months, for no substantive progress to be made on determining the application and there is very little justification based on clear and proper reasons why it could not have made the June Committee. Moreover, there was a significant delay between receiving the legal advice before seemingly anything was done about it. In addition, despite the Council contending that the application was complex, the legal advice given to the Council, based on what is contained in the July Planning Committee report is quite straight forward and it concluded that there was a strong possibility that an appeal against non-determination of the application would be upheld. This was a significant reason why the Council concluded that it would not defend the appeal and it identified the risk that an Inspector could sustain arguments that the Council had behaved unreasonably in these circumstances.
12. I consider that the application should have been relatively straightforward to determine, particularly given the history of the Lawful Development Certificate. Moreover, PPG is clear that in any appeal against non-determination, the local planning authority should explain why permission would not have been granted had the application been determined within the relevant period. However, in this case the Council not only decided not to defend the appeal but it also concluded that it would have been granted subject to the imposition of three conditions. PPG indicates that local planning authorities are at risk of an award of costs if they prevent or delay development which should be clearly permitted, having regard to its accordance with the development plan, national policy and any other material considerations. There is also no reasonable explanation as to why the Council could not have decided to grant planning permission subject to conditions much earlier than what it eventually concluded at the July Planning Committee. It is not surprising that after the passing of the June Committee the appellant decided to force the issue and appeal against non-determination four months after the application site visit.
13. I note that the appellant states that he may have been minded to appeal against the conditions proposed, had permission been granted. However, as that would have been be a matter for a separate appeal, it has very little bearing on this application for costs based on non-determination of the application for the second caravan.

Conclusion

14. All in all, I conclude that the Council did behave unreasonably and that had it reached its conclusions much earlier in the process it would have avoided the appellant incurring the unnecessary expense involved in making the appeal, particularly bearing in mind that the Council then took the decision not to defend the appeal. The circumstances justifying an award of costs as described in the PPG have been demonstrated. Consequently, a full award of costs is justified.

Costs Order

15. 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 Barrow-In-Furness Borough Council shall pay to Mr G Miles, the costs of the appeal proceedings described in the heading of this decision.
16. Mr G Miles is now invited to submit to Barrow-In-Furness Borough Council, 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 the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

Helen Cassini

INSPECTOR