

Costs Decision

Hearing held on 23 November 2016

Site visit made on 23 November 2016

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 16 December 2016

Costs application in relation to Appeal Ref: APP/Y0435/W/16/3145928 The Premier Academy, Saffron Street, Bletchley, Milton Keynes MK2 3AH

- 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 Warren Harrison for a full award of costs against Milton Keynes Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for an award of costs 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 PPG states that costs may be awarded in circumstances including preventing or delaying development which clearly should be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 4. The applicant has submitted a claim on both a procedural basis, in that determination of the application was unreasonably delayed and that once the appeal was lodged the Council have not pro-actively worked with the appellant to minimise the work required in relation to the appeal; and a substantive basis that the development is one that should have been permitted as it would accord with the development plan and national policy.
 5. Delay in determination of the original application arose from Council Members deferring consideration of the proposal a number of times in order for them to visit the site. Following the second deferral the appellant lodged the appeal. Consideration of planning applications often involves matters of judgement which at times can be very finely balanced. With this proposal there was a considerable number of representations from local residents regarding the effect that the proposal would have on their living conditions and highway
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safety. Given that the application was recommended for approval and a planning committee is not bound to accept the recommendations of their officers whilst I acknowledge it caused a delay in determining the planning application I do not consider that it was unreasonable, given the level of local concern, for Members to wish to visit the site to be able to assess the situation for themselves.

6. The applicant contends that having lodged the appeal that the Council have then been unreasonable in the way in which the appeal has been managed and as a consequence they have incurred additional expense in relation to the amount of work required preparing for the appeal. Whilst I acknowledge that the Council did not submit a Statement of Case, the applicant had been provided with a copy of the committee reports and minutes which the Council considered satisfactorily detailed their reasons for why they would have granted planning permission and why they considered the additional conditions necessary. Furthermore, an agreed statement of common ground, albeit somewhat delayed, was submitted prior to the commencement of the Hearing. As a consequence I consider that whilst the Council could have worked more pro-actively with the appellant in producing the appeal documentation the issues at dispute and the Councils position would have been evident to the applicant from the documentation submitted and as a result any unnecessary work that the appellant may have undertaken should have been very limited.
7. Having visited the site the Planning Committee have made it clear that had the applicant not lodged the appeal that they would, subject to a number of additional conditions to those recommended by their officers, have approved the application. However, it is equally clear for the reasons outlined in their evidence and at the Hearing that the applicant considered these additional conditions did not meet the National Planning Policy Framework (the Framework) tests and would therefore in any event have been likely to appeal the decision had the Committee granted planning permission.
8. For the reasons outlined in my Decision I have agreed that planning permission should be granted. However, I considered that additional conditions 1 and 3 which the Council would have imposed would not meet the Framework test for conditions and that additional condition 2 needed to be reworded to accurately reflect the fact that the parking area adjacent to Eat 'n' Hall has already been provided. In light of my conclusions, I consider that the Council have acted unreasonably with regards to seeking to impose additional conditions 1 and 3 which has resulted in wasted time and unnecessary expense for the appellant and as a consequence a partial award of costs is justified.

Costs Order

9. 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 the Milton Keynes Council shall pay Mr Warren Harrison, the cost of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to dealing with additional conditions 1 and 3.
10. The applicant is now invited to submit to Milton Keynes Council, to whom a copy of this decision has been sent, details of those costs 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