
Costs Decision

Site visit made on 19 December 2016

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 13th January 2017

Costs application in relation to Appeal Ref: APP/T0355/W/16/3157199 Unit 1, Coningsby Farm, Coningsby Lane, Fifield, Maidenhead SL6 2PF

- 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 Michael Smyth for a full award of costs against 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 the conversion and change of use of a barn to residential use incorporating an extension to the roof.
-

Decision

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

Reasons

2. The Planning Practice Guidance (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.
 3. The application for the award of costs is made on the basis that the Council did not determine the application within the target date. It is claimed that the failure to do this, or to request an extension of time to determine the application, without explanation, constitutes unreasonable behaviour. Moreover, it is suggested that the Council has no substantive reasons for refusing having regard to the development plan, the *National Planning Policy Framework* (the Framework) and the previous permissions on the site.
 4. The PPG indicates that if a local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. However, it also suggests that before deciding to submit an appeal for non-determination, applicants should consider engaging with the Council to establish when an application might be determined.
 5. In addition, it states 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 why permission would not have been granted had the application been determined within the relevant time period. It goes on to highlight that if an appeal is allowed in such circumstances, costs may be awarded against the local planning authority if it is considered that there were no substantive reasons to justify delaying the determination and if better communication with the applicant would have enabled the appeal to be avoided altogether.
-

6. The appellant has indicated that the application was due to be determined by 16 August 2016, and that the appeal against non-determination was submitted on the 9 September 2016. The Council have indicated that the reason for the delay in determining the application resulted from the fact that the original officer dealing with the application went off on long term sick leave during the time the application was being determined. Whilst it was unfortunate that the likely resulting delay was not communicated to the appellant, there is equally no substantive evidence to indicate that the appellant sought to find out when the application might be determined, before submitting the appeal against non-determination, as the emails submitted by the appellant, are all dated after the appeal was lodged. Neither party appears to have followed best practice in this regard.
7. In responding to the appeal the Council have produced both an officer's report and a "decision notice" which sets out the reason why the Council would have refused permission had an appeal against non-determination not been submitted. The reason for refusal relates to the proposed development, and its location within the Green Belt. Substantive reasoning is set out in the Officer's report, and the policies within the development plan, to which the Council considered the scheme would be contrary, are set out in the reason for refusal. As such these represent proposer planning grounds.
8. The Council concluded that the size of proposed extension to the building would represent a disproportionate addition to the original dwelling, and so the appeal scheme would represent inappropriate development within the Green Belt, which would also have a detrimental impact on the openness. As detailed in my decision letter, in this case what constitutes a disproportionate addition is a matter of judgement for the decision maker. The Council's evidence sets out clearly why it is considered to be disproportionate, and the greater impact this would have on the openness. Whilst the appellant may not agree with this, it does not mean that the Council has acted unreasonably.
9. In terms of the impact on the character and appearance of the area, I have found that the proposal would be acceptable. However, in such matters the consideration of the application / appeal involves matters that are finely balanced, and are matters of judgement. I consider that the Council's evidence has substantiated the reasoning for why it considers the proposal is detrimental in this regard, as it highlights that the increase in the physical size of the building, and the work needed to it, would be detrimental to the rural character of the area. In the light of this, I am not persuaded that the Council has acted unreasonably in this regard.
10. Furthermore, the Council's evidence also clearly indicates that a previous permission had been granted on the site, but highlights that this is materially different to the appeal scheme, as it did not enlarge the existing building. As such, I am satisfied that it had due regard to this "fallback" position.
11. Overall, I consider that the Council has provided substantive reasoning for why permission would not have been granted, had the application been determined within the relevant time period. In the light of this, although the appeal is against non-determination, as the Council would have refused the application, the cost of the appeal does not represent wasted or unnecessary expense.

12. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

Alison Partington

INSPECTOR