
Costs Decision

Site visit made on 16 January 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 17th February 2017

Costs application in relation to Appeal Ref: APP/J1860/W/16/3157997 Former Larford Works, Larford Lane, Astley, Worcestershire DY13 0SQ

- 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 Joe Folkes (c/o Allens Caravans Estates Ltd) for a full award of costs against Malvern Hills District 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 change of use of land for the siting of residential caravans.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The 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 expense in the appeal process.
 3. Paragraph 048 of the PPG highlights that local authorities may be at risk of an award of costs where there are no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided. Although the PPG says that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, it makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, during the process by which the Inspector's decision is reached.
 4. The appellant contends that they have sought, at length to engage with the Council and seek feedback for the proposals and that because of a lack of engagement, the appellant was left with no alternative but to submit an appeal on 5 September 2016. Despite the contention from the Council that 'the applicant was advised on numerous occasions that the application was to be refused', the evidence indicates that the Council did not email the appellant's agent until 22 August 2016 listing 7 concerns with the proposal and summarising the Council's objections.
 5. It is clear that the Council had concerns regarding the proposals and it was the appellant's choice to appeal against the non-determination of the application instead of continuing to work to address these concerns. Nevertheless, there is little before me to demonstrate why the Council were unable to make a
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decision on the application, which was dated 23 December 2015. Therefore, I fully appreciate the appellant's frustration by the Council's failure to determine the application and not engage until some 8 months after submission of the application. Without any evidence to the contrary the Council has acted unreasonably in this regard. However, for costs to be awarded unreasonable behaviour must also have resulted in unnecessary or wasted expense.

6. Although the Council did not issue a decision and the appellant lodged the appeal against non-determination in September 2016, it is apparent that an appeal was necessary in the face of the Council's clearly-stated objections a month earlier. The Council have also adequately explained why permission would not have been granted had the application been determined within the relevant period and it is not the case here that the appeal could have been avoided.
7. I have found that the Council had reasonable concerns regarding the main issues and furthermore, there is no evidence to suggest that agreement could have been reached on these, or other matters. In this particular case, an appeal was inevitable. Thus, although the delay in determination should not have occurred, there was no unnecessary or wasted expense to the appellant by pursuing the appeal.
8. For these reasons I do not find that the appellant was caused unnecessary or wasted expense, despite the Council's unreasonable behaviour in engaging earlier in the process and by not providing a formal explanation as to why the application was not determined.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason an award of costs is not justified.

Richard Aston

INSPECTOR