

Costs Decision

Site visit made on 28 November 2016

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 1 March 2017

Costs application in relation to Appeal Ref: APP/G5180/X/3151746 Knockholt Farm, New Years Lane, Knockholt, Sevenoaks, Kent TN14 7PQ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Alan Howell for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of a certificate of lawful use or development for operational development associated with change of use to residential in accordance with details submitted 14/04750/FLXAG.
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Decision

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

Preliminary Matter

2. Along with the Council's submissions in respect of this costs application additional information was submitted which related to the appeal itself and were in effect late submissions. They have not been considered in respect of either this costs application or the planning appeal.

Reasons

3. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises 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.
 4. The appellant sets out that the Council spent an unreasonable amount of time dealing with the original prior approval application and were unwilling to agree that the development could proceed. In addition the matter should not have been referred to the planning committee as the sole issue was one of lawfulness. At that time the Council's only reason for refusal was the lack of an agricultural business but due to the passage of time, and new guidance being published, the Council added further grounds.
 5. Furthermore the Council did not take into account additional information on a further application. The Council did not understand procedural rules which led to the need for the LDC application and subsequent appeal. All of that could have been avoided if procedure had been followed and the planning committee not consulted.
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6. The Council set out that time was taken on detailed legal considerations of a relatively new form of permitted development. The Council sought to ensure the application was properly considered and well-founded with the appellant being informed at all stages. The application was determined at committee level because of its more involved passage and so that a final decision could be taken in an open and transparent forum, with the appellant able to address members of the committee.
7. The PPG at Paragraph 033 advises that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, 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.
8. I have a great deal of sympathy for the appellant and the fact that he has been waiting a considerable amount of time for this matter to be finalised. The Council accept that they did not meet the 56 day period in respect of the original prior approval notification. However, that is not unusual and, as set out in my decision, a development proposal that otherwise falls within the class limitations can lawfully proceed, subject to the relevant time limitation.
9. The PPG sets out that where a local planning authority fails to determine an application within the time limits, it should give a proper explanation. However, that prior approval process is not before me. I can only consider costs relevant to this appeal and how the LDC application was dealt with. I accept that the application did not bring with it considerations such as the planning merits of the scheme or any local objections and in that regard it was a decision to be made on matters of fact.
10. However, how the Council chose to do that is entirely in their control, there is nothing before me to corroborate the view that the appellant was prejudiced by that or that the outcome would have been any different had it not gone to the planning committee.
11. In the same way, whilst undoubtedly frustrating, there is nothing to substantiate that the time taken to consider the application would have resulted in a different outcome, or that this appeal could have been avoided, regardless of the new guidance that was published. Furthermore the appellant has made much of the 56-day period and at that point could have chosen to carry out the development on his own legal advice. He chose not to which ultimately led to this appeal.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Richard Perrins

Inspector