
Costs Decision

Site visit made on 5 April 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 3rd May 2017

Costs application in relation to Appeal Ref: APP/Z3825/W/16/3165620 Lock Farm, Lock, Partridge Green, Horsham RH13 8EG

- 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 John Ford for a full award of costs against Horsham District Council.
 - The appeal was against the refusal of planning permission under application DC/16/1036 for the removal of condition 2 imposed on planning permission Ref WG/56/02 to allow a permanent storage use that would be unrestricted to a user or use.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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 costs application has been made on a substantive basis, with the applicant contending that the Council acted unreasonably because it: failed to determine the application in a timely manner; failed to act positively and proactively in the determination of the application; and unreasonably introduced highway safety as a reason for refusal.
 4. Paragraph 033 of the PPG makes it clear that costs cannot be claimed in relation to the period during the determination of a planning application. The Council has submitted that the planning application's determination was delayed because it was awaiting comments from its internal consultees. That said the removal of the condition sought did not raise any particularly complex issues.
 5. There appears therefore to be no good reason as to why it took a little over four months for this planning application to be determined, especially as it was submitted not long after another application (DC/15/2638) concerning the same barn had been determined by the Council. The Council states that it sought an extension of time for the application's determination, but that request was rejected by the applicant. I consider the absence of an agreed extension of time does not provide a justification for the planning application's determination being delayed.
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6. The applicant contends that the Council did not act positively and proactively prior to the planning application's determination. However, there does appear to have been some dialogue between the parties and the applicant's agent, in an email of 16 August 2016, sought to respond to the highway authority's comments of early August.
7. As it appears that an extension of time had not formally been entered into, it would have been open to the applicant to have made an appeal on the grounds of the Council's failure to determine the application within eight weeks of the planning application's submission. I appreciate that the delay in determining the second application could have been frustrating for the applicant. However, having regard to the provisions of paragraph 033 of the PPG, I do not consider that the delay that arose or the Council's conduct while it determined the application, are factors that resulted in the applicant incurring unnecessary expense in association with the making of the appeal.
8. It is contended, given the refusal reasons for application DC/15/2638, that it was unreasonable for the Council to have introduced a highway reason for refusal in determining the second application. However, the terms of the two applications were quite different, with the first application being for a specific use for the barn, which enabled the highway implications of the barn's use to be more readily assessed. In determining the appeal I have found that insufficient evidence is available for it to be concluded that the barn could be occupied on unrestricted Class B8 basis without there being harm to the safety of the users of Lock Lane and Bines Road.
9. I therefore consider that it was reasonable for the Council to have refused permission on the grounds of highway safety and that the case it has made on appeal has substantiated that reason for refusal. In that respect I have concluded that under the circumstances of this case it would be inappropriate for the barn to be used for Class B8 purposes on an unrestricted basis and that control by condition is necessary. While it might be possible to address the concerns that resulted in the refusal of planning permission and the dismissal of the appeal by imposing a varied condition, that did not form part of the application before the Council, given that it sought the complete removal of condition 2. I therefore find that it was reasonable for the Council to have determined the application in the way that it did, without giving consideration to the imposition of a varied condition. I therefore consider that unreasonable behaviour by the Council, as referred to in the PPG, most particularly paragraph 049, has not occurred.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Grahame Gould

INSPECTOR