
Costs Decision

Site visit made on 23 May 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 31 May 2017

Costs application in relation to Appeal Ref: APP/V2635/W/16/3152793 81 Broadend Road, Walsoken, Wisbech, Cambridgeshire, PE14 7BQ

- 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 Pamela Wenn for a full award of costs against King's Lynn and West Norfolk Borough 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 outline planning permission for a proposed single storey dwelling.
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Decision

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

Procedural matters

1. The written costs application was dated 21 June 2016. The Council's written response was forwarded to the applicant on 14 November 2016 and the applicant's final comments were dated 17 November 2016.

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. In short, the two planks of the application are that: (i) the Council unreasonably pursued enforcement action against a lawful dwelling; and (ii) its failure to determine the planning application within the statutory period was unreasonable.
 4. The question of whether the dwelling structure on site was lawful was a matter for the lawful development certificate (LDC) appeal submitted by Mr Wilson under Ref APP/V2635/X/16/3154621. However, that appeal was withdrawn following receipt of counsel's opinion. In my decision on the substantive appeal, I explained why it was not open to me to conclude that the dwelling was lawful. Given that the LDC appeal was withdrawn; there was no appeal against the enforcement notice issued by the Council in 2006; and Mr Wilson was successfully prosecuted in 2008 for breach of that notice, I cannot conclude that the Council acted unreasonably by continuing to pursue enforcement action. Similarly, I cannot conclude that it was unreasonable of the Council to approach this appeal on the basis that there is not already a lawful dwelling building on the site.
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5. With regard to the failure of the Council to determine the planning application within the statutory 8 week period, the appeal was made some 25 weeks after the planning application was validated. The PPG states that preventing or delaying development which should “clearly be permitted”, having regard to its accordance with the development plan, national policy and any other material consideration, may amount to unreasonable behaviour.
6. I note the applicant’s detailed and evidence-based critique of the Council’s claim that it was inundated with planning applications and therefore determination was delayed. I also note her claim that the Council would not identify when the planning application might be determined or enter into a dialogue with her. However, even if I were to conclude that it was unreasonable of the Council to delay determination of the application until it could demonstrate that it had a five year housing land supply, the Council says that it would have refused the application anyway, because of the impact on the supply of gypsy and traveller sites. I concluded on the substantive appeal that the proposal would harm that supply. I attributed substantial weight to that consideration and I am not persuaded that the application should *clearly* have been permitted, if it had been determined before the Council could demonstrate a five year housing land supply.
7. Whether or not the Council unreasonably delayed determination of the application, I cannot conclude that the delay resulted in an unnecessary appeal and consequent wasted expense.
8. For all the reasons given, I conclude that there should be no award of costs.

J A Murray

INSPECTOR