

Costs Decision

Site visit made on 20 July 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 01 September 2017

Costs application in relation to:

Appeal Ref: APP/J0405/X/16/3161726

Land at Canal Farm, Main Road, Buckland HP22 5JA

- The application is made under the Town and Country Planning Act 1990 sections 174 and 322, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs S Gillingham for a full award of costs against Aylesbury Vale District Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development for: Completion of the building operations together with the use of the finished building for residential purposes.
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Decision

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

Reasons

National guidance

2. National guidance on awards of costs is set out in the *Planning Practice Guidance* [hereafter "the PPG"]¹. The PPG states that in planning appeals and other planning proceedings parties normally meet their own expenses. All parties are expected to behave reasonably. 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 PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the appeal process or substantive, relating to the merits of the appeal. It provides some examples of the types of behaviour that might be held to be unreasonable, and which may give rise to an award of costs against a Local Planning Authority. These examples, insofar as procedural matters are concerned, include lack of co-operation with the other party, delay in providing information and failing to explain the reasons for not reaching a decision within the relevant time limit when better communication would have enabled the appeal to be avoided. With regard to substantive matters, the examples include preventing or delaying development which should clearly be permitted, failing to produce evidence to substantiate a reason for refusal, acting contrary to, or not

¹ *Planning Practice Guidance* is a web-based resource that was launched by the Department for Communities and Local Government on 6 March 2014. It provides, among other things, national guidance on costs awards, replacing the guidance formerly provided by Circular 03/2009. Its guidance on awards of costs is found in the section titled "Appeals".

following, well established case law and not reviewing its case promptly following the lodging of an appeal. The list is not exhaustive.

The appellant's costs application

4. The appellant's application for costs is made on procedural and substantive grounds. The appellant contends that the Council failed to set out its case and has not participated in the appeal process. It has given no proper explanation for its non determination of the application. The legal advice which it says it was seeking didn't materialise. It failed to follow well established case law. Despite repeated requests the Council never produced any information about the issues it had or explanation of its position which could have avoided the appeal or narrowed the issues. Neither has it substantiated its case in the appeal process. The appellant contends that the Council has wilfully delayed the project without it having any genuine reason.

The Council's response

5. The Council has given no response to the application for costs made against it.

My assessment and conclusions

6. The application was in the Council's hands to determine for some four months before the appeal was made. This was well beyond the prescribed eight week period for decision. The Council said it was waiting for legal advice although it appears, from email exchanges between the appellant's agent and the Council's officer, that this was not sought until week twelve. Eventually, the Council's officer said she had received correspondence from the legal team but still needed to clarify matters before she could update the appellant. However, no further update was provided. Neither has the Council explained its reasons for not reaching a decision within the relevant time limit in this appeal.
7. During the time that the application was pending it should have been possible for the Council to obtain legal advice and reach a view on whether or not it considered the proposed development to be lawful. The appellant was entitled to a decision on the application. The Council's failure to issue one without giving defensible reasons for the delay, and without providing a substantive response to the appellant and explaining the reasons for the non determination in this appeal, amounts to unreasonable behaviour in the circumstances of this case.
8. Throughout the appeal process the Council followed procedures insofar as it completed the questionnaire, publicised the appeal and attended the site visit. It was, otherwise, silent and did not respond to the appellant's request that it clarified its stance. However, in a Lawful Development Certificate appeal the burden of proof is upon the appellant. There was no obligation upon the Council to provide a statement of case or to comment on the appellant's case. Whilst I can understand why the appellant was seeking clarification, I do not find that the Council's conduct in the appeal process itself was so un-cooperative as to amount to unreasonable behaviour in these overall circumstances, excepting in the matter I have referred to above.
9. Turning to substantive matters, the appeal has centred upon the issue of whether or not the proposed development would have been permitted development. The appellant's legal opinion (which supported the LDC application and the appeal) was sought on that point specifically following the

view expressed by the Council's enforcement officer that the works were not permitted development. Thus the appeal was focussed.

10. Whilst the Council did not set out its stance explicitly, or reveal the content of its legal advice, there is nothing to indicate that its position had fundamentally changed since the time of the advice given by its enforcement officer. There remained unresolved issues between the Council and the appellant which it was appropriate to consider through an appeal process. Irrespective of its unreasonable behaviour in the handling of the application, and its failure to make a decision without giving an explanation, I cannot see that the costs of the appeal, or any identifiable part of it, could have been avoided in these overall circumstances.
11. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Susan Wraith

INSPECTOR