



Costs Decision

Site visit made on 16 August 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 07 September 2017

Costs application in relation to Appeal Ref: APP/U1105/W/17/3173788 Kings Down Tail Caravan and Camping Park, road past Kingsdown, Salcombe Regis EX10 0PD

- 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 David Paget for a full award of costs against East Devon 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 the conversion of ancillary building to permanent site-warden's two-bed residential accommodation; continued use of south east field for storage of touring caravans; and erection of open-sided shelter in south east field.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

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. The PPG also explains that unreasonableness may be either: procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.

Procedural issues

3. It was very clear that the Council considered that the continued use of south east field for storage of touring caravans and the erection of open-sided shelter in that field would be acceptable. The applicant had requested that the acceptable parts be approved and the conversion be refused. Within appeals, Inspectors are able to issue split decisions by virtue of section 79(1)(b) of the act. Even in such cases, this has to be undertaken with care to ensure the acceptable parts of the proposal are severable from the unacceptable parts. It is less clear when Local Planning Authorities can do so although the PPG states that in exceptional circumstances it may be appropriate for the LPA to use a condition to grant permission for only part of the development (i.e. to split a decision). The PPG also explains however that it will normally be best to seek amended details from the applicant prior to a decision being made.
4. I can understand the Council's reluctance to issue a split decision as it is not

clear that exceptional circumstances applied to this case. Such a provision needs to be used with care. However, although the Council requested the alteration of the proposal by removing what they considered was the unacceptable element, I can also understand the appellant's reluctance to do so. That would then have required the re-submission of an application for that part of the proposal in the expectation that it would be refused and that an appeal would then be necessary.

5. Even if a split decision had been issued by the Council, my understanding is that to challenge that decision relating to the parts deemed unacceptable by the Council, the applicant would need to appeal the whole decision with the Inspector considering the application as if it had been made to him in the first place (section 79 of the act). Therefore an appeal would have been necessary to challenge the Council's view of the proposed conversion of the outbuilding whichever way a decision was reached.
6. I do not consider that the Council's non-agreement to issuing a split decision was unreasonable. However, at the point in the processing of the planning application when it became clear that there would be no agreement between the Council and the appellant regarding the procedural matters, I am unclear why a decision to refuse the application was not made. Although the Council requested extensions of time to deal with the application, there is no obligation upon an applicant to agree. The lack of agreement does not absolve the Council of its responsibility for making a decision.
7. On 7 November 2016 the planning application was registered as a valid application and the '8 week' determination date should have been 2 January 2017. By the 13 April 2017, a decision had still not been reached and the applicant submitted the appeal against the failure of the Council to make a timely decision. The PPG states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. The applicant states that despite numerous attempts to obtain an answer about the procedure to be taken, there were only 2 occasions when a response was received. According to the applicant these responses indicated that the matter had been referred to the legal department, and this is not disputed by the Council.
8. The Council's reason for the delay and the explanation of it was insufficient. The continued lack of response to the internal consultation with the Council's legal department regarding the matter of issuing a split decision was not a justifiable reason for the extent of delay in this case in my view. The applicant would have been in a better position had the Council refused the planning permission at an earlier stage. That would have made the Council's case clear in a formal document (rather than informal officer opinions). This would also have made it clear that the submission of an appeal was necessary at an earlier stage. I consider that the delay in this case constituted unreasonable behaviour by the Council.

Substantive issues

9. I have allowed the appeal on the planning merits of this case which involved judgements which were not clear cut. I can understand that another person could reach an alternative view of those matters. In providing a view that part of the proposal was unacceptable the Council did not do so in an irrational way and were not unreasonable. I am also mindful that the Council has been very

clear that some parts of the proposal were acceptable and that this helps all involved to concentrate on just the disputed matters.

10. The evidence provided by the appellant regarding economic benefits was not comprehensive. It was not clear why the development was essential for the running of the existing holiday park and I gave that matter little weight. The Council's lack of consideration of economic benefits of the development was not decisive. Had the Council given a little weight to that matter as I did it seems unlikely that it would have been sufficient to outweigh their view that LP Policies would not be complied with.

Wasted expense

11. I consider that the delays in dealing with the planning application constituted unreasonable behaviour. However, given the planning officer's view of the merits of the proposed conversion to provide site warden's accommodation, an appeal was always likely to be necessary to challenge that view. As such, I do not consider that all of the time spent by the applicant's planning consultant in the appeal process would have been wasted. A full award of costs is therefore not justified.
12. The applicant's planning consultant did spend time in corresponding with the Council in the period between the statutory 8 week date and the lodging of the appeal. That would result in costs to the applicant. Had the Council dealt with the case in a reasonable way, that extent of the applicant's costs could have been avoided. Although the appeal was not submitted at that stage, the contact with the Council was a preliminary part of the appeal process once the right of appeal became available and related to what matters would ultimately be in dispute. There would also have been some time involved in setting these matters out within the subsequent appeal papers. These costs would have been avoided or would have been reduced had an earlier decision been reached. Although more reasonable behaviour would not have avoided an appeal entirely, I consider that a partial award is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Devon District Council shall pay to Mr David Paget, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the efforts in corresponding with the Council between the 8 week date and the submission of the appeal as well as the elements of the appeal submissions relating to the procedural unreasonableness of the Council; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to East Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Harwood

INSPECTOR