
Costs Decision

Site visit made on 11 October 2017

by D Guiver LLB(Hons) Solicitor

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

Decision date: 6 November 2017

**Costs application in relation to Appeal Ref: APP/M1005/W/17/3179821
Canaan Fields Farm, Chesterfield Road, Oakerthorpe, Alferton, Derbyshire
DE55 7LP**

- 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 S Slater for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal to grant approval required under Class Q of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015.
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Decision

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

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. Costs may be awarded to any party regardless of the outcome of the appeal.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal or with respect to procedural matters.
4. The applicant submits that the Council has acted unreasonably by preventing or delaying development which should clearly be permitted and by failing to produce evidence to substantiate the reason for refusal. The applicant also submits that the Council has acted unreasonably by failing to communicate and failing to adhere to deadlines.

Delay Development and Evidential Matters

5. The decision notice was dated 14 June 2017 and for the purposes of Paragraph W(4) of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) deemed refusal was on the grounds that the proposal would not be permitted development under Class Q of the GPDO. On the evidence before me, I reached the same conclusion.
6. Under these circumstances it cannot be said that the Council has prevented or delayed development which should clearly be permitted. I also concluded that

the Council's evidence was sufficient to demonstrate that the appeal site was used other than for solely agricultural purposes and therefore substantiated its decision.

Cooperation and Deadlines

7. The Council acknowledged the applicant's application but erroneously stated there was a 42-day deadline for determination rather than a 56-day deadline. However, the applicant was assisted by an experienced planning consultant and apparently understood the correct timescale. I consider that the applicant suffered no detriment from this error.
8. The applicant states that Council officers did not make any contact to discuss matters or to seek clarification. The applicant says that had they done so further explanations and evidence could have been provided to satisfy the Council that the proposal benefited from deemed permission under Class Q.
9. While communication is an important part of the planning process, I consider it unlikely that this could have resolved the parties' pivotal differences on this matter, and therefore the appeal was necessary to resolve the issue. As a result of the appeal, the applicant has now had the opportunity to address all the matters raised by the Council. I concurred with the Council's determination that the proposal did not benefit from deemed permission under Class Q.
10. The Council did not issue a formal decision either to grant or refuse prior approval within the 56 day period specified within the GPDO. In the event the Council was one day late and its decision notice determined that the proposal did not benefit from deemed permission under Class Q. The applicant did not begin to implement the proposal in reliance on the Council's error in calculating the date for a response and has therefore suffered no prejudice.
11. Having regard to all of the above, I cannot conclude that the Council acted unreasonably in finding that the proposal did not benefit from deemed permission under Class Q. While the Council did make procedural errors, they did not result in any unnecessary or wasted expense and therefore do not constitute unreasonable behaviour for the purposes of the PPG.

Conclusion

12. On the basis of the evidence before me, I conclude that it has not been demonstrated that the Council behaved unreasonably or caused unnecessary or wasted expense in so far as an award of costs could be justified. I therefore determine that the costs application should fail and no award is made.

D Guiver

INSPECTOR