
Costs Decision

Site visit made on 11 May 2016

by M Seaton DipTP MRTPI

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

Decision date: 05 December 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3145225 Dunkirk Farm Paddock, London Road, Holmes Chapel, Cheshire, CW4 8AX

- 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 Oketops for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of an application for the construction of 10 dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
 3. The applicant contends that the Council acted unreasonably during the planning application through a failure to make a timely request for additional or updated information, with requests for information being received after the target decision date, and a failure to place the application before the planning committee, despite repeated promises. Furthermore, the applicant has also cited very limited communication during the course of the planning application, and that an agreed deadline secured through an extension of time to determine the planning application was missed. It is alleged that these events led to unnecessary and wasted expenses in respect of the need to submit the appeal.
 4. The Council disputes the failure to maintain communication with the applicant during the early stages of the planning application, referring to an ongoing contact with the agent in respect of consultation responses during the course of the planning application, as well as the sending of an e-mail summarising the key outstanding matters.
 5. I have carefully considered the timeline of e-mails which were sent and received by the applicant during the planning application. It is apparent that a significant number of e-mails were sent by the applicant for which there is no evidence that responses to requests and updates were forthcoming from the Council. In this respect, I am mindful that following the consultation of the various statutory and technical consultees on 9th January 2015, that many of
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the responses were received within a comparatively short period following the initial consultation request. There is documentary evidence of the Council forwarding on some of the initial consultation responses, and I have had regard to the Council's correspondence of 27th May 2015, which I am of no doubt would have been helpful to the applicant in identifying and summarising the various outstanding issues. Whilst the Council has not explained the reasons for the extended delay in the intervening period, which I note also encompassed the target decision date for the planning application and the originally anticipated Committee Meeting date, given the outstanding issues I do not consider the delays in themselves to necessarily be an indicator of unreasonable behaviour.

6. I note from the applicant's Final Comments to the Costs Application, that further to the May 2015 correspondence from the Council, there was a delay in responding to the Council's outstanding matters until 9th September 2015. It has been highlighted that this was to allow the resolution of issues on the adjacent affordable and private housing sites, with these identified as highway matters having an impact on the access proposals for the appeal site. The applicant accepts that the Council was aware of the inter-related nature of the 3 separate proposals in respect of the access, and acknowledge that the Council held rather than determined the application whilst these matters were resolved. This situation was of clear benefit to the applicant.
7. With this in mind, and due to the need seemingly to first resolve the access matters on the adjoining two sites, I am not persuaded that any delays that may have arisen in the early stages of the planning application ultimately led to unnecessary additional expenditure for the applicant. Furthermore, there is no indication that the need to first resolve associated matters connected to the neighbouring sites was delayed due to the timing of the receipt of the Council's comments on the appeal scheme.
8. With reference to the latter stages of the application, the Council has not made any submissions to dispute the applicant's contention regarding delays at this point and a failure to adhere to the agreed extension of time. Nevertheless, it is evident from the applicant's own description of the timeline of events included within the appeal statement, that following the September 2015 submissions by the applicant, further concerns had been raised by the Council. Additional tree and highway submissions were then made. Subsequently, it was apparent that the absence of further follow-up consultation responses in respect of these matters, and concerns over the status of the emerging Brereton Neighbourhood Plan, had contributed to the Council delaying the processing of the planning application. Whilst I note the request from the Council for a short extension to the formal time period for determination of the planning application, it is clear that this was only agreed by the applicant 3 days prior to the expiration of the requested period, which would have been unlikely to have provided sufficient time to prepare and deliver a report to Planning Committee.
9. Ultimately, the applicant exercised the remedy which was available upon the expiration of the extension of time, which was to appeal against the Council's failure to determine the planning application. However, it is evident from the Council's Planning Statement that concerns remained over the location and impact of the development beyond the existing settlement boundaries, and therefore its accordance with the Development Plan, and emerging Local Plan

and Neighbourhood Plan. As a consequence the matter would still have had to go to appeal and the same expense on appeal would have had to be incurred. In this respect, whilst I have had regard to the applicant's reasoning, I am not persuaded that had the planning application been determined by the Council's Planning Committee, there would have been no need for a planning appeal.

10. Despite my decision to ultimately allow the planning appeal, on the basis of the above conclusions, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.
11. For the reasons given above, I refuse the application for an award of costs.

M Seaton

INSPECTOR