The Planning Inspectorate

Costs Decision

Site visit made on 22 January 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2019

Costs application in relation to Appeal Ref: APP/D1835/W/18/3208692
Land at Rose Bank, Worcester

- 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 Philip Deeley, Matthews City and Country Homes for a full award of costs against Worcester City 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 installation of new vehicular gateway and pedestrian gates.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 applicant's first ground for claim of costs is based largely on the failure of the local planning authority (LPA) to determine the planning application within the prescribed period, which led to the appeal against non-determination.

4. Paragraph 048 of the PPG sets out scenarios when a local planning authority's handling of the planning application prior to the appeal may lead to an award of costs. It advises: *'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. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.*

   If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.'

5. In this case, the LPA did fail to determine the planning application within the prescribed time-limit and from the information available to me, I have no strong evidence to refute the applicant's assertion that no explanation for the delay with the application was given at the time.

6. Nevertheless, despite the modest scale of the proposed development and lack of consultee objections, from the appeal submissions it is evident that the delay in processing the application was attributed to several factors specific to this application, including an amendment to the original scheme, and the LPA having to refer the application to its Planning Committee on two separate occasions, in-line with its internal processes.

7. Moreover, the applicant chose to exercise the right to appeal, in the knowledge that the application would potentially be determined at the meeting of the Planning Committee on 20th September 2018. At that meeting the Council resolved, that had it been able to determine the application it would have approved it, subject to conditions. Consequently, had the applicant waited for the outcome of the September Planning Committee, the appeal could have been avoided.

8. Whilst I understand the sense of frustration which the delay and lack of communication would have caused for the applicant, it would not be reasonable to conclude that the Council had behaved unreasonably in the process leading up to the appeal based on the information before me.

9. Taking into account the above factors, I conclude that there were substantive reasons to justify delaying the determination of the application and I am not persuaded that better communication with the applicant would have enabled the appeal to have been avoided altogether.

10. In light of the Planning Committee's resolution to approve the appeal scheme, the applicant chose to submit a further identical application[1] to give the LPA an opportunity to approve the applicant's proposed scheme, and the non-determination appeal process was held in abeyance pending the outcome of that application. Subsequently, that application was reported to Planning Committee on 22 November 2018 and refused. Consequently, a further ground of appeal advanced by the applicant is the LPAs failure to determine similar applications in a consistent manner. However, as the applicant's second application is separate from that which is the subject of this costs appeal, the outcome of this is not relevant to this appeal.

11. The applicant also asserts that inaccuracies in the reporting of the application may have influenced Planning Committee's initial decision to refuse the applicants application. Nonetheless, there is no substantive evidence to support this assertion.

Conclusion

12. Given all the foregoing, I find that the Council did not act unreasonably in this case. Accordingly, it is not necessary to consider the question of unnecessary or wasted expense. I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Aqbal
INSPECTOR

[1] P18D0406