The Planning Inspectorate

Costs Decision

Site visit made on 28 May 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Costs application in relation to Appeal Ref: APP/D0121/W/19/3221990
Land off Station Close, Congresbury BS49 5EE

- 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 Martin Richards of Richards Developments for a partial award of costs against North Somerset 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 outline planning permission for residential development of up to 13 no. dwellings and associated infrastructure with access for approval and appearance, landscaping, layout and scale reserved for subsequent approval.

Decision

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

Reasons

2. Planning Practice Guidance 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 expense in the appeal process.

3. The Applicant submits that the Council has acted unreasonably in their failure to determine the appeal within the agreed time period for the application. Furthermore, given that the Council subsequently indicated that the appeal should be allowed, then had the Council determined the planning application within the agreed period, the appeal would have been unnecessary. The claim for partial costs relates to the preparation and submission of the appeal statement, and comments on the Council's statement.

4. Practice Guidance further indicates that, if an appeal against the failure to determine an application within the requisite time period is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that i)there were no substantive reasons to justify delaying the determination and ii)better communication with the applicant would have enabled the appeal to be avoided altogether.

5. The application raised some complex issues in relation to the Special Area of Conservation and was set against the backdrop of the emerging Congresbury Neighbourhood Development Plan. Nevertheless, the correspondence between the parties reflects that the Council up until early December 2018 had been acting positively and proactively. Consequently, the parties were in

communication agreeing time periods for determination, with the Council accepting amended plans and undertaking further consultation.

6. However, during the remainder of December 2018 until the beginning of February 2019 when the appeal was submitted, the evidence suggests that communication ceased on the part of the Council. This was notwithstanding repeated requests from the applicant to discuss the application, and an email dated 19th December 2019 suggesting that he would proceed to an appeal.

7. However, notwithstanding that the Council might be criticised for their lack of communication in relation to part of the application process, there were nevertheless, some outstanding substantive reasons to justify delaying the determination further at that point. These included a requirement to undertake an Appropriate Assessment under the Habitats Regulations that showed suitable mitigation measures, and in relation to securing Planning Obligations towards the provision of Affordable Housing under a legal agreement.

8. Accordingly, as there were substantive reasons to justify delaying the decision at the point the appeal was submitted, it is not demonstrated that both parts of the PPG advice are met. Consequently, although better communication may have resulted in the appeal being avoided, it was not clearly the case that the proposal should have been permitted at the point the appeal was submitted. The applicant chose to exercise his right of appeal notwithstanding those outstanding matters and as such, this was not an unnecessary or wasted expense.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector