



Costs Decision

Site visit made on 20 May 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2019

Costs application in relation to Appeal Ref: APP/C1435/W/18/3216496 Northover Barn, Meres Lane, Cross In Hand, East Sussex TN21 0UA

- 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 Nicola Webber for an award of costs against Wealden 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 demolition of existing buildings and erection of three no. dwellings.
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Decision

1. The application for the 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.
3. The applicant has raised a number of points in its application for costs, dated 15 November 2018, where it believes that the Council acted unreasonably. Each will be considered in turn.
4. During the pre-application stage the Council's flexible approach¹ to the conversion of agricultural buildings to dwellings was discussed with the applicant. However, in June 2018 the Council withdrew this flexible approach, which was communicated to the applicant's agent². Based on the evidence submitted³ by the Council it is clearly stated that the advice given at the pre-application stage of the application process was without prejudice to the formal consideration by the Council. In this respect, I do not consider the Council acted unreasonably. In any case the PPG states that pre-application advice cannot pre-empt the decision-making process.
5. The applicant states that the Council failed to engage and provide explanation as to why the application had not been approved. The Council has submitted copies of correspondence⁴ with the applicant's agent advising that there were changes to the policy situation and at a later stage that an extension to the

¹ Background Paper to Wealden District Council's approach to Class Q Permitted Development rights: Conversion of Farm Buildings to Residential Use Guidance Note dated February 2016

² Email dated 20 July Doug Moss to John Bullock

³ Wealden District Council Summary of Pre application meeting dated 7 February

⁴ See footnote 2

timescale might be advisable. I have reviewed the evidence before me which does not corroborate the applicant's assertion that the Council failed to engage effectively to explain why the application had not been approved.

6. The applicant states that the Council evaded attempts to explain fully the legal process regards the way planning decisions would be based on policies contained within the draft local plan. However, the correspondence between the parties clearly demonstrates that its previous flexible approach indicated in its informal briefing note had been withdrawn and that a more rigorous policy had been included in the emerging Wealden Local Plan 2018. The Council is entitled to withdraw guidance as it sees fit. There is no indication that the Council acted unreasonably in this regard.
7. With regards the Council's failure to determine the application within the requisite time period, the evidence suggests that the Council was in dialogue with Natural England regarding the Habitats Regulation Appraisal and mitigation measures as part of the emerging plan process. PPG states that councils may determine the application where consultees do not respond within the statutory timescale. However, the Council considered it appropriate to delay the decision until the implications of that dialogue were apparent. Although an extension to the application had been proposed, the applicant decided a right of appeal for non-determination was the preferred course of action. I therefore conclude that these were genuine reasons for delay and the Council was not unreasonable in taking this course of action.
8. The applicant asserts that the Council failed to engage in any meaningful dialogue regards development options. However, the Council has been clear and consistent in its communications regarding alternative use and the relevant policies. In any case, this has not led to wasted expense at appeal for this application.
9. Finally, the applicant suggests that the Council is acting unreasonably with regards the way it handles applications prior to the emerging local plan being progressed further. Until local plans and its draft policies have been formally adopted by the Council, they have only limited weight. The Council's position was clearly communicated in correspondence⁵ with the applicant and therefore on this point, the Council did not act unreasonably.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense at appeal, as described in the PGG, has not been demonstrated.

Paul Wookey

INSPECTOR

⁵ Email Head of Planning & Environmental Services dated 24 August 2018 to Mr and Mrs Webber