
Costs Decision

Site visit made on 7 July 2019

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2019

**Costs application in relation to Appeal Ref: APP/N4720/W/19/3227983
Land south of Church Close, Pool in Wharfedale, Leeds**

Grid Reference Easting: 424416, Grid Reference Northing: 444972

- 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 Clough Hey Limited for a full award of costs against Leeds 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 outline planning permission for residential development with new access roads and landscaping.
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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. Paragraph 49 of the PPG states that 'local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by...failing to determine planning applications'.
3. The application to which the appeal relates was not determined by the Council. As set out in PPG Paragraph 48, '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'.
4. The applicant asserts that 'the LPA, intentionally or unintentionally, misled the appellants and their advisors' and that this amounted to unreasonable behaviour which caused the applicant to incur unnecessary or wasted expense in the appeal process.
5. It appears from the evidence before me that progress on the appeal application was delayed for many months, by mutual agreement between the Council and applicant, pending the outcome of the appeal and High Court proceedings in relation to a development proposal on the adjacent site (Pool Road¹).

¹ APP/N4720/W/17/3187334

6. Whilst it would appear that the applicant did not expect the Council to oppose the principal of the appeal proposal should those judicial proceedings be unsuccessful, it is nevertheless recognised in paragraph 4.7 of the applicant's Statement of Case that during this time the development plan progressed.
7. I note that in February 2019 the Inspector's decision on another case in Leeds (appeal reference APP/N4720/W/18/3198312) stated, in relation to the emerging Leeds City Council Site Allocation Plan (SAP), 'the examination is not concluded and the final form of the SAP remains unknown, particularly as further public consultation is underway. There remain significant unresolved objections and the plan is yet to be found sound. For all of these reasons, the SAP continues to attract only limited weight at this time.'
8. As paragraph 48 of the National Planning Policy Framework (Framework) sets out, local planning authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the Framework.
9. The High Court judgment was handed down on 13 March 2019, by which time consultation on the SAP Main Modifications (MMs) had ended. By then the SAP was at an advanced stage, the MMs being considered necessary to make the plan sound having regard to objections, and consistency with the Framework having been addressed by the Inspectors.
10. Given this material change in circumstances, I do not consider that the Council took an unreasonable approach in advising the applicant that the proposed development could not be supported and would therefore be refused.
11. Overall, based on the evidence before me, in accordance with paragraph 48 of the PPG, the Council gave the applicant a proper explanation as to why the application would not be determined within the time limits. Indeed, the delay was agreed by both parties and the reasons for it were clear. Moreover, in the appeal, the Council has explained why permission would not have been granted had the application been determined within the relevant period. I have no evidence that the Council intentionally or unintentionally misled the applicant and their advisors.
12. Against the background set out above, I do not consider that the Council has behaved unreasonably.

Conclusion

13. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated.

CL Humphrey

INSPECTOR