



Costs Decision

Site visit made on 16 July 2019

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 September 2019

Costs application in relation to Appeal Ref: APP/E2205/W/19/3227775 Land at Church Hill, High Halden TN26 3JB

- 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 Nicholas Parkin of Hamlin Estates for a full award of costs against Ashford Borough 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 residential development of up to 26 dwellings.
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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.
3. Paragraph 047¹ of the PPG advises that the type of behaviour that may give rise to a procedural award against a local planning authority could occur where there has been a failure to adhere to deadlines, or a lack of co-operation with the other party.
4. Paragraph 049² advises that a local planning authority could be at risk of a substantive award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing or failing to determine planning applications, failing to produce evidence to substantiate each reason for refusal, or vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The applicant is concerned that a decision had not been issued by the Council within agreed extended timescales, and that requests for a date for the application to be considered by Planning Committee were ignored, while another similar application on a nearby site was determined more expeditiously.
6. The Council has provided an explanation of the reasons for the delays in reaching a decision and appears to have agreed various extensions of time with

¹ Reference ID: 16-047-20140306

² Reference ID: 16-049-20140306

the applicant to allow amendments and additional information to be provided. I have seen no evidence regarding the circumstances of the similar application so cannot conclude whether its consideration was comparable.

7. The application was not determined by the Council, and while I can understand the applicant's frustration at the lengthy delays, I have seen no evidence that the Council behaved unreasonably. The Council has indicated that it would have refused the application if it had been able to determine it and has provided clear and detailed reasons why it would not have granted permission. It is not therefore the case that the appeal could have been avoided and therefore the applicant has not incurred unnecessary expense. Moreover, I have found that the Council had reasonable concerns about the proposal.
8. The applicant states that pre-application advice provided by the Highway Authority was ignored during the consideration of the application, which then required further assessment to be carried out, causing further delays. The applicant is also concerned that the Council did not seek independent landscape advice but nonetheless questioned the applicant's own landscape assessment, requiring further assessment to be carried out without reason.
9. Informal advice given before an application is made is provided without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. I have seen no explanation for the conflicting advice provided by the Highway Authority, but I have no firm basis to conclude that the advice provided by the Highway Authority was so misleading as to amount to unreasonable behaviour, nor that they did not have sound reasons for requesting the further assessment. The Council is under no obligation to obtain specialist landscape advice, and it is not unreasonable to rely on the professional judgement of its own officers. It has provided objective analysis to support its putative reasons for refusal. Moreover, there is no evidence that the additional assessments were unnecessary and therefore a wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

N Thomas

INSPECTOR