



Costs Decision

Site visit made on 5 August 2019

by J Hunter BA (Hons) Msc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2019

Costs application in relation to Appeal Ref: APP/H0928/W/19/3229308 Field adjacent to A685, Church Brough, Nr Kirkby Stephen CA17 4EJ

- 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 and Mrs F Milburn for a full or partial award of costs against Eden 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 new dwelling garden curtilage area, field adjacent road, A685, Church Brough.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, Paragraph 030 of the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour can relate to procedural matters (i.e. the appeal process) or substantive matters (i.e. issues related to the planning merits of the appeal).
4. The appellants consider the Council behaved unreasonably resulting in unnecessary and wasted expense in the appeal. With reference to examples of unreasonable behaviour provided in the PPG the appellants claim that the LPA prolonged the proceedings by introducing a new reason for refusal and that there was delay in providing information or other failure to adhere to deadlines.
5. The Council submitted a statement within the required timescales which referred to an appendix containing a list of suggested conditions however, it appears that there was an administrative oversight and the appendix was omitted. Accordingly, PINS contacted the Council and requested the list of suggested conditions which they provided in a timely manner. The appellants were provided with a copy of the suggested conditions and given the opportunity to comment. Therefore, they were not prejudiced in any way by the acceptance of the information nor were the proceedings prolonged acknowledging that all information was submitted prior to the deadline for final comments.

6. Additionally, the appellants claim that the Council's list of suggested conditions included an additional reason for refusal in the form of a request for a legal agreement to secure the proposed housing for local occupancy and to limit the size of the proposed dwelling. Whilst it would have been more appropriate for the Council to request the legal agreement during the application process, I do not consider that the request for a legal agreement amounts to an additional reason for refusal. In any event, as there was no decision notice in this case there were no formal reasons for refusal. Consequently, I do not agree that the Council has acted unreasonably in this regard.
7. I note that the appellants have made reference to the unreasonableness of the suggested conditions within their claim for costs. The costs process is not the forum for determining the reasonableness of suggested conditions. Nonetheless, when determining an appeal and applying conditions the Inspector has regard to the six tests contained within the PPG and in the event that a suggested condition is deemed to fail any of the six tests it would be amended or omitted accordingly.
8. I note that the appellants include further reference to the application of the relevant planning policies during the planning application stage however, these matters are dealt with within the associated decision letter. The costs application is not an opportunity to re-address the merits of the appeal proposal.

Conclusion

9. For the collective reasons outlined above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Julie Hunter

Inspector