



Costs Decision

Hearing Held on 26 November 2019

Site visit made on 26 November 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2019

Costs application in relation to Appeal Ref: APP/W0530/W/19/3227393 Former Barrington Cement Works, Haslingfield Road, Barrington, Cambridgeshire CB22 7RQ

- 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 Redrow Homes for a full award of costs against South Cambridgeshire District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for consent, agreement or approval to details required by a condition of planning permission.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states the following:

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. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether¹.

3. The above passage is relevant to this application for an award of costs as the applicant is of the view the Council failed to determine the planning application within the prescribed period without adequate justification, and this unreasonable behaviour resulted in an unnecessary appeal having to be lodged and for the costs associated with this to be incurred.
4. The appeal was submitted concurrently with another application to the Council seeking approval of the reserved matters. The Council approved this

¹ Paragraph: 048 Reference ID: 16-048-20140306

- application in September 2019, finding it to be consistent with the relevant policies in the development plan. The drawings in both the appeal scheme and the approved application are identical and therefore the Council confirmed that the appeal should be allowed.
5. This is a strong indicator that the failure to determine the appeal scheme in a timely manner was unreasonable, as the subsequent approval demonstrates there is no basis for not having positively determined the application on its planning merits sooner. The Council did not seek significant alterations to the second scheme (minor alterations being made in July 2019) so it is not as if the appeal scheme was a long way from acceptability when it was before the Council in the spring of 2019. If it were, then the need for substantial revisions may have justified the delay in a decision being made.
 6. However, to get to a scheme that was near to being acceptable, with June 2019 verbally suggested as being a possible date for reporting positively to the planning committee, the scheme had been amended more than once. This demonstrates that the Council were willing to engage with the applicant and seek solutions to matters of concern. In this respect, the Council did not sit on an acceptable scheme for thirty-one weeks necessitating an appeal to be made.
 7. It is clear from the evidence submitted that the applicant did not hit a wall of silence from the Council. There were email exchanges, dialogue and meetings between the two parties, and it is understandable that the Council would wish to deal with revisions holistically rather than in a piecemeal fashion. The Council's tone in the emails was generally helpful and conciliatory. The production of an issues log appears to have been a genuine attempt to move matters along. However, it had its limitations, being prepared late in the assessment process and comprising a list of consultee comments, some of which were contradictory or superfluous, rather than a planning assessment by the local planning authority.
 8. Although the Council's conduct was not obstructive, serious delays occurred nevertheless. This can be put down to several factors. Firstly, the Council's initial engagement was not effective. The meeting held on the 13 November 2018 was a missed opportunity to provide clear and comprehensive feedback on the scheme. This is when an issues log would have been helpful, or at least a clear explanation of the Council's concerns following a planning assessment. Given that the application had been submitted on the 10 September 2018, the Council should have been in the position to do this, and been much clearer as to what needed to be done to make the scheme acceptable, particularly as there had apparently been positive pre application discussions.
 9. The failure to provide useful planning feedback in November (or before) was compounded by a failure to respond to the applicant's email of the 6 December 2018, which sought reasonable clarification on what amendments were required. This in turn resulted in the applicant submitting amendments on the 17 December 2018 that had been informed by consultee's comments, but not the local planning authority's assessment of these.
 10. The knock-on effect of the above is that the revisions did not completely address the Council's concerns. This resulted in the need for further discussions between January and April 2019 with matters becoming increasingly fractious due to IT failures, consultees missing response deadlines and meetings being difficult to arrange.

11. When meetings did take place, Officers were apparently ill prepared, having not reviewed amended plans submitted in advance and seeking to discuss matters outside the scope of the reserved matters. From reading the email correspondence there is the sense the Council were never quite on top of the case. This understandably dented the applicant's confidence in the Council's ability to move matters forward.
12. The fact that the Council were able to approve the duplicate application is evidence that solutions to all the issues identified were achievable and that the lengthy delay was unnecessary, occurring primarily due to a lack of effective communication and constructive planning feedback at an early opportunity. Moreover, the applicant demonstrated a willingness to proactively engage with the Council, identify solutions and make changes.
13. Accordingly, the appeal could have been avoided with better communication from the Council, particularly comprehensive feedback in the autumn of 2018. It is entirely unclear why it was unable to do this. Had timely feedback occurred the appellant would have been able to make amendments or open a dialogue on points of disagreement, with a view to meeting the initial target date of a decision in February 2019, which itself was inexplicably over a month after the target date for determining the application.
14. In conclusion, there is no substantive evidence before me to indicate the Council were deliberately obstructive. However, the failure to effectively engage has had the same effect as if it had been – a lengthy and unreasonable delay. The appellant has therefore been put to the expense of submitting an unnecessary appeal because the application should have been determined positively by the Council sooner. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has occurred and that a full award of costs is justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Cambridgeshire District Council shall pay to Redrow Homes the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to South Cambridgeshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Chamberlain,
INSPECTOR