



Costs Decision

Site visit made on 24 September 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Costs application in relation to Appeal Ref: APP/Y1138/W/19/3232381 Land North of Frog Street, Bampton, Devon EX16 9PX

- 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 P Booth of Land Allocation Ltd for a full award of costs against Mid Devon 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 described as *'outline application for residential development for up to 37 dwellings with associated vehicular and pedestrian access on Land North of Frog Street'*.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council withheld its response to a pre-application enquiry and, prior to its failure to determine the planning application Ref 9/00413/MOUT, did not respond proactively to requests for communication or opine as to the likely recommendation. During the appeal, the Council failed to substantiate each reason for refusal and made vague, generalised and inaccurate assertions about the proposal. It is also considered that the Council refused planning permission on a planning ground capable of being dealt with by condition, on a site subject of an extant or recently expired permission where there has been no material change in circumstances.
4. The Council accepts its failure to provide a pre-application enquiry response, determine the application, the absence of any agreed extension of time and the lack of any substantive update of the situation. The Council considers that this inaction was a consequence of uncertainty caused by the Examination in Public of the Local Plan Review (LPR) and staffing shortages.
5. However, both the pre-application response and the determination of the planning application could and should have been made on the circumstances at that point in time. As such, the potential for the status of the LPR to change was not a fair reason for the Council to delay its decision making or fail to proactively engage with the applicant. Although I appreciate that staff resources may have been limited at the time, this does not constitute a reasonable justification for the problems that the applicant experienced.

6. It is clear that the Council's conduct in these regards left the applicant with no choice but to pursue the appeal. It therefore fell below the expectations set out within the PPG and the National Planning Policy Framework and constitutes unreasonable behaviour in procedural terms.
7. Notwithstanding this, the Council did promptly review its case at the appeal, giving three reasons for refusal. The first reason for refusal accepts that the Council's housing policies are out of date and gives greater weight to those in the emerging LPR. This is inconsistent with the Inspector's findings in relation to the appeal at Willand¹, which the Council presented to me, and fails to fully consider the implications of the LPR Post-Examination Advice Note. It is also the case that this weighting of considerations led the Council to fail to apply the 'tilted balance'².
8. Given such, I find that there is inaccuracy in the Council's approach to the first reason for refusal which did not stand up to scrutiny at the appeal. However, it seems to me that this matter was rebutted by the applicant without great outlay or difficulty, and therefore did not cause substantive wasted expense when the appeal is considered as a whole.
9. I have ultimately agreed with the Council's substantive concerns regarding the character and appearance of the area, which was not a reason for refusal related to the principle of development. On this basis, the Council's failure to determine the planning application did not prevent or delay development that should have been permitted. Although the third reason, relating to planning obligations, could potentially have been avoided with better earlier engagement, completion of a legal agreement was a necessity in any event.
10. The applicant has referred to a separate planning application at the site under Ref 19/01167/MOUT. However, this relates to a different proposal and is not germane to this application. Whilst the site is allocated, there is no extant or recently expired planning permission on the land, and I found that the Council's concerns could not have been resolved through use of planning conditions.
11. Drawing my findings together, the Council's conduct prior to the appeal fell below the expectations of the PPG and the Framework, but there is no evidence that it directly led to unnecessary or wasted expense at the appeal. Likewise, whilst I agree that the first reason for refusal was unreasonably put forward by the Council, I do not find that the appellant was put to substantive expense during the appeal as a result. Given such, whilst I appreciate the justified frustrations which have been raised, I do not find that the Council's conduct directly caused unnecessary or wasted expense during the appeal that would justify an award of costs.

Conclusion

12. Taking all matters raised into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Matthew Jones

INSPECTOR

¹ APP/Y1138/W/18/3214685

² Paragraph 11 d), National Planning Policy Framework