



Costs Decision

Site visit made on 2 December 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Costs application in relation to Appeal Ref: APP/C1570/W/19/3236047 Land to the west of Mill Lane, Hatfield Heath, Essex CM22 7AA

- 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 W I Bampton for a full award of costs against Uttlesford 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 development described as 'Demolition of existing buildings, conversion of water tower to form a dwelling, erection of 25 Dwellings and the retention, renovation and change of use of 7 buildings to form ancillary facilities to the residential development'.
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Decision

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

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 evidence presented indicates strongly that the Council's handling of the planning application could have been much better. At first, Officer's supported the proposal at both the pre application and application stages. This resulted in a recommendation of approval, even after the heritage issues had been raised by the Conservation Officer late in the Council's four-year long engagement in the project. However, the planning application was deferred by the planning committee after they failed to reach a decision.

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

4. Following the committee deferral, the Council reappraised the case and indicated that a refusal would be forthcoming. The concerns raised were significant, including the status of the site as previously developed land and the impacts on the Green Belt, the character and appearance of the area and highway safety. These matters had previously been found to be acceptable in the committee report and had been identified by Officer's who had previously recommended approval. This about face was not precipitated by the submission of any new evidence but seems to have been triggered by a change in the Council's administration, which should have had little bearing on the merits of the case. Therefore, the change in the position of Officer's would have been difficult for the applicant to fathom, and understandably dented his confidence in the Council's ability to adequately move matters forward. This would have been all the more galling given the applicant's demonstrable willingness to engage with the Council and address problems that have been raised.
5. Nevertheless, whilst a U-turn is always a difficult cause of action it was, in this instance, the correct one. For the reasons set out in my formal decision the proposal is unacceptable. The Council should have come to this conclusion sooner and its failure to do so was unreasonable, resulting in considerable delays. That said, an earlier refusal by the Council would have left the applicant in the same position as he found himself in - having to submit an appeal and incur the costs of doing so. As such, the appellant has not been put to the unnecessary expense of lodging an appeal by the Council's failure to determine the application. Importantly, as the appeal has been dismissed, the Council did not delay development that should clearly have been approved.
6. Furthermore, and perhaps with the exception of its concerns over highway safety and its analysis of the planning obligation, the Council's concerns have been properly articulated and were grounded in evidence and the development plan. The Council's concerns are not inconsistent with other permitted schemes in Mill Lane (Ref UTT/0911/05/FUL and UTT/17/2262/FUL) as these related to smaller schemes with a lesser overall impact.

Conclusion

7. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR