



Costs Decision

Site visit made on 14 October 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Costs application in relation to Appeal Ref: APP/U1105/W/19/3231349 Land to the south of King Alfred Way, Newton Poppleford EX10 0DG

- 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 Clinton Devon Estates for a full award of costs against East 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 the construction of up to two dwellings.
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Decision

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

Background

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance indicates that 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.
4. The Guidance goes on to explain that 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 altogether.
5. Furthermore, the Guidance indicates that behaviour which may give rise to a substantive award of costs against the local planning authority includes preventing or delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.
6. The applicant, in summary, has explained that the Council acted unreasonably by failing to determine the application on two occasions, ignored the relevant development plan policies and the consistent advice of planning officers, and

instead based its decision to defer on irrelevant matters that cannot be justified in planning terms.

7. It is argued that by the applicant that by failing, unreasonably, to determine the application the Council has prevented development which clearly should be permitted and the fact that the Council is not contesting the appeal further emphasises that the applicant has been put to unnecessary and wasted expense in having to submit an appeal.
8. The Council has explained that the application was presented to the Committee on 5 March 2019 and the proposal was deferred to seek further evidence in relation to the community need for any proposed health centre from health providers.
9. The application was brought back to committee at the first opportunity allowing time for responses on 11 June 2019. At this meeting, the Council has explained the application was deferred again in order for the applicant to meet with the Parish Council and Medical Centre. It is explained that at the Committee Meeting the Estates Team of Clinton Devon had stated that work on the dwellings would not start until the end of 2019, and therefore it was considered that a period of three months to have these meetings would be sufficient, and would not delay development of housing. As a consequence, it is argued that the Council has not acted unreasonably.

Reasons

10. The provision of the doctors' surgery was a component of the comprehensive development of the site when the original outline planning permission was granted. The importance that the local community, Parish Council and the Council placed on the surgery element of the scheme is understandable. However, in terms of planning considerations, the position was explained in the original outline proposal Committee Report in 2014¹ and the accompanying Committee Reports (for the present outline proposal for up to 2 dwellings) that there is, and was, no planning requirement that justified the provision of a surgery and the land was not secured or safeguarded for this use.
11. In the circumstances of this case, strictly in terms of relevant planning considerations and the application of the wording of the relevant planning policies, the deferral of the application in March 2019, to further investigate the prospect of delivering a surgery on the site, is difficult to justify.
12. Nevertheless, further information was collected and reported to the meeting on 11 June 2019. The information in this report sets out the further efforts that the Council, the Parish Council and others had undertaken to work with the various parties to investigate whether the delivery of a surgery was achievable. The information, in summary, indicates that while there appeared to be some interest, there was not a clear prospect with funding that would, in all likelihood, lead to a firm commitment in the near future that a local medical practice would be willing and able to take on the site. Notwithstanding this position, which because of the planning circumstances is essentially background information to the case, the clear planning position continued to be set out in the report that the proposal was acceptable in relation to planning policies and other planning considerations.

¹ Application 13/0316/MOUT – dated 8 May 2014.

13. This was an outline application and, if permitted, reserved matters would take some time to work up, submit and reach agreement upon. I therefore do not accept that because work was said to not be starting on site until the end of 2019 this justified a further delay in decision making. In any case, when work may start on site is a matter for the applicant and the Council is required to determine an application in accordance with the Development Plan unless material considerations indicate otherwise.
14. While the Council explained that a second deferral at the meeting on 11 June 2019 was to allow discussions between key parties, as detailed information was already set out in the report, there was not a substantive material planning reason for delaying the determination of the application. I consider that this further deferral was not justified. This would have resulted in a 6 month period of deferral on an issue that was not directly relevant to the main planning considerations in this case. I consider that this further deferral constituted unreasonable behaviour.
15. Given the reason for deferral, there could be no certainty that a decision would be reached at the next meeting and the appellant submitted an appeal against non-determination. When the proposal was again considered at the meeting in August 2019, the Council resolved that it would have permitted the scheme, if it had still been able. I consider that this helps to demonstrate that development has been delayed that should have been permitted. If the Council had permitted the scheme in March 2019, or even June 2019, the appeal would not have been necessary and this has led to unnecessary and wasted expense.

Conclusion

16. In the light of the above analysis, I have found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

17. 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 East Devon District Council shall pay to Clinton Devon Estates, 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.
18. The applicant is now invited to submit to East Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR