



Costs Decision

Site visit made on 11 December 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Costs application in relation to Appeal Ref: APP/E2530/W/19/3237021 The Bungalow, Church Street, Foston NG32 2LG

- 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 Ms S Hall for a full award of costs against South Kesteven 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 'proposed 2no. 2 storey, 4 bed detached dwellings with associated parking and landscaping.'
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Decision

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

Reasons

2. 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 caused the party applying for costs to incur unnecessary expense in the appeal process.
3. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
4. The applicant's case in seeking an award for costs appears to be grounded in both procedural and substantive matters. They feel that the Council have been unreasonable in not reaching a decision in the required time period. In so doing, and in the applicant's view, the Council have delayed development that should have been permitted having due regard to its accordance with relevant local and national policy. Furthermore, they have made inaccurate assertions about the impact of the proposed development and failed to take account of other developments approved. Ultimately, the applicant feels they have been subject to additional costs in the preparation and submission of the appeal.
5. The appeal with which this application for an award of costs is associated arose from the failure of the Council to reach a decision within the statutory timescale. That being, in this case, eight weeks from its valid deposit with the

- relevant authority. Not reaching a decision on a planning application is not, in and of itself, grounds for a successful claim for costs, frustrating though delays caused by such inaction can be. There is provision for recourse, that being the very process under which the appeal is submitted.
6. The reason for the lack of a decision from the Council, according to them, appears from the evidence to be a combination of assumptions as to the applicant's intentions in regard to whether or not they were to submit additional details and plans and some information having been sent to them but not provided for the attention of the relevant case officer.
 7. The request for further information from the Council was early in August 2019, roughly half way through the life of the planning application according to my understanding of the dates. This seems reasonable in itself given that it would have allowed time for initial consultations to return. The applicant has stated that the requested information was returned but it seems, from the Council's evidence, it wasn't received by the case officer. Even so, there was still some time, until at least the end of August or the first week in September, for the Council to have made a decision in time which it appears would likely have been a refusal given the breadth of issues that were of concern to them. Concern which was not wholly down to a lack of confirmatory information on highway matters.
 8. Councils are encouraged to engage positively and proactively with applicants during the submission of a planning application but they are under no statutory duty to contact them with issues, changes or concerns. Their statutory duty is, amongst other things, to deliver a decision on a given development. Whilst I appreciate they failed to do so, the applicant submitted an appeal against their inaction in this respect which was their right to do.
 9. The applicant submitted the appeal against non determination swiftly after the end of the planning application's life. As I have said, it seems to me from the reasons the Council gave as to what would have been their views on the scheme that an appeal may not have been avoided in any event. Their request for further information during the application's life appears to have related to highway and parking matters. The concerns they have expressed in their appeal documentation go noticeably beyond that.
 10. The Council have set out their views in the appeal documentation. Whilst light and contrary to my own findings in regard to some main issues, they have done so in sufficient detail to be able to demonstrate that the proposed development would not accord with the development plan. They have identified the policies they consider relevant. I acknowledge that the applicant disagrees with these conclusions which is arguably par for the course in a planning appeal situation.
 11. In presenting their appeal, which it seems sufficiently clear to me would unlikely have been avoided, the applicant has had to respond to matters of ecology and flood risk. However, they have not commissioned any further detailed third party survey or assessment work that would have involved substantial additional cost.
 12. In terms of other developments that have been approved in the past I acknowledge that the Council's treatment of them has been light and some additional commentary would have been helpful. Unhelpful however does not

automatically mean unreasonable. Not knowing detail about the circumstances of the other schemes mentioned by the applicant, it would be difficult for me to say with any certainty that the outcome would have been different for the Council. Suffice as to say however that the Council's concerns over the appeal scheme were numerous and specific to the development proposed and where it would have been located. In essence, matters limited to its own individual merits.

13. I acknowledge that delays to the determination of a planning application can be frustrating for those involved and it seems possible that, with better and more targeted communication, an appeal against non determination could have been avoided. However, and taking into account my earlier comments, I am not convinced an appeal would have been completely avoided. In places, the Council's conduct could have been more proactive and further engagement about their wider concerns would have been helpful to the process, during the process. In addition, I do not agree that the time of year the application was deposited is an acceptable defence for this not happening.

Conclusion

14. Be the above as it may, I do not find that the Council's actions, or inactions as the case may be, have amounted to being unreasonable and, critically for the reasons I have given, amounted to such that has caused the applicant to incur unnecessary or wasted expense as a result. A claim for costs is not therefore justified. Accordingly, it is hereby refused.

John Morrison

INSPECTOR