



Costs Decision

Site visit made on 2 January 2020

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Costs application in relation to Appeal Ref: APP/T0355/W/19/3238358 The Chalet, Ravensdale Road, Ascot, Windsor and Maidenhead SL5 9HJ

- 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 Stephen Bennett for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of planning permission for development described as a 'detached dwelling with integral garage following demolition of existing dwelling – renewal of approved application ref: 12/00882 decision date 1st June 2012'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The applicant claims both procedural and substantive unreasonable behaviour from the Council.
3. Turning firstly to procedural matters. The application was a resubmission of a scheme that had been previously granted planning approval in 2012¹. The applicant suggests this is a simple matter and ought not to have taken four years to determine. Furthermore, the applicant states that the Council did not provide any correspondence during the application process, including no requests for an extension of the determination target, or opportunity for positive and proactive discussions. They assert that they reminded the Council of the application before it was, without discussion, subsequently refused.
4. The Council highlight that in the four-year period three further alternative proposals at the site were submitted to them. One of which was withdrawn and the other two were dismissed at appeal following non-determination. In light of this context, and given the lack of correspondence from the applicant, the Council assumed that the applicant did not wish to pursue the application. The Council asserts that they initiated correspondence after carrying out a review of their out of time cases and were subsequently instructed that the applicant wanted the matter determined.
5. Just because an application is the same as one that has been previously granted planning approval, I do not consider that it is necessarily a

¹ LPA Ref: 12/00882

straightforward matter. It is important that applications are considered on their own merits in light of the current development plan and any material considerations. However, I consider the four-year determination period and lack of correspondence to be unreasonable. Whilst I consider that the planning history at the site mitigates this to a degree the PPG sets out that the local planning authority should give the applicant a proper explanation if it is clear that they will fail to determine a matter within the time limits. Therefore, given the delay in determination and lack of correspondence, I find that the Council have acted unreasonably in this regard.

6. Turning to the substantive matters. The applicant asserts that the Council's first reason for refusal was contradictory to the 2012 planning approval. They state that the second and third reasons for refusal have not been substantiated given the inappropriate weighting applied to material considerations and lack of consultation with an ecological expert.
7. The Council consider that the reasons for refusal have been substantiated within their officer delegated report and Decision Notice and that appropriate consultations, albeit verbally, with their ecology officer were carried out.
8. The Council's Decision Notice adequately sets out the reasons for refusal and the conflict with relevant planning policy. Furthermore, the officer report elaborates and further substantiates their decision at section seven, entitled 'explanation of recommendation', including reference at paragraph 7.2 to the policy changes detailed within section 3.3 of the report. The report also details the development plan context at section 4. Therefore, I consider that the Council have adequately substantiated the grounds for refusal. In my Appeal Decision I have reached the same conclusion as the Council noting material changes in circumstances since the 2012 approval. Additionally, whilst I found that relatively minor issues could have been addressed by conditions, overall, I concluded that the Council's assessment was justified. Furthermore, I consider the judgement as to whether an ecological report is required is one that the Council's planning officer can reasonably make, even without a verbal consultation with their ecologist. Therefore, I find no substantive unreasonable behaviour.
9. However, having found unreasonable behaviour in regard to the delayed determination and lack of correspondence to explain this, it is necessary to consider if that has resulted in wasted time and expense for the applicant. The Council highlight that the delays did not prevent further applications and appeals at the site being made. Furthermore, they state that if the applicant had desired a decision, they could have either approached the Council or appealed against non-determination.
10. It is clear from the planning history that a non-determination appeal is an option that the applicant has shown willing to explore in the four-year determination period, but chosen not to on this case. Furthermore, the lack of correspondence from the applicant in this period is of significance too. I find that the lack of correspondence from both parties to have contributed to the delays in determination. Moreover, I do not consider that better communication would have enabled the appeal to be avoided altogether without relatively significant alterations to the scheme.

11. Therefore, on balance, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

James Taylor

INSPECTOR