



Costs Decision

Site visit made on 11 February 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th March 2020

Costs applications in relation to Appeal Ref: APP/Y2620/W/19/3238670 Plots 2 and 3, Land off Cromer Road, Mundesley, NR11 8DB

- 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).
 - An application is made by Mr Ryan Bailey for a full award of costs against North Norfolk District Council.
 - An application is made by North Norfolk District Council for a full award of costs against North Norfolk 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 erection of four dwellings without complying with a condition attached to planning permission Ref: PF/19/0214 dated 15 May 2019.
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Decision

1. The application for an award of costs against North Norfolk District Council is allowed, as set out in the terms below.
2. The application for an award of costs against Mr Ryan Bailey is dismissed.

Procedural Matter

3. As set out in the banner heading above, there has been a costs application submitted by both parties. Given the nature of the dispute and the contents of the costs applications, I have considered these under this single decision.

Reasons

4. Paragraph 16-030-20140306 of the Planning Practice Guidance (the 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 or wasted expense in the appeal process.
5. Paragraph 16-049-20140306 of the PPG states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications. Examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

6. The appellant commenced some of the works on plot 2 before the Council had determined planning application Ref: PF/19/0872. It was the appellant's choice to undertake these works at the appellant's own risk.
7. The Council has provided the correspondence with the appellant over matter that lead to the failure to determine planning application Ref: PF/19/0872. The Council's Interim Development Management Team Leader and Locum Lawyer are clear in their view that the application could not be determined under s.73. However, throughout the Council's correspondence and dialogue with the appellant, there is little in the way of a full and reasoned rationale behind this conclusion.
8. It is clear that in preparing its correspondence with the appellant, the Council knew of but failed to have adequate regard to the key conclusions of the judgement of *Lawson Builders Ltd v SSCLG [2015] EWCA Civ 122*. I have set out the most relevant findings of this judgement in my decision letter and will not repeat them here. However, based on the correspondence provided to me, it appears that the appellant's views and interpretation of s73 and s73A were aligned with that judgement.
9. The Council suggests that the appellant 'chose' the appeal route instead of other options offered. However, based upon the correspondence before me and in the context of my findings, the Council's choices would have incurred unnecessary expense for the appellant, for example, requiring the submission of a new application form and the considerably larger planning fee. The Council also fails to explain how exactly this fee has been calculated with reference to the appropriate legislation. The Council suggests the appellant declined a meeting to discuss the matters raised. However, based upon the Council's stance and reasoning throughout its correspondence, there is nothing that suggests the outcome would have been any different.
10. In an email the appellant's agent suggests they would not apply for costs against the Council subject to the Council remaining consistent in its planning judgement. The agent's suggestion appeared to be conditional on other matters being agreed that day and taking further instruction from the appellant. This does not constitute a signed written undertaking by the appellant, constitute unreasonable behaviour or invalidate the costs application that is before me. Therefore, I have to consider both costs applications having regard to the guidance set out in the Planning Practice Guidance and the evidence before me.

Conclusions

11. The Council could and should have determined the application prior to the appeal being lodged and has acted unreasonably by unnecessarily delaying the determination of the application. This appeal could have been avoided and the appellant has incurred unnecessary expense. Therefore, this demonstrates unreasonable behaviour on the part of the Council, and as a consequence, led to the appellant incurring unnecessary and wasted expense in the appeal process.
12. For the reasons set out above I cannot conclude that the appellant's behaviour has been unreasonable and resulted in unnecessary expense for the Council.

Costs Order

13. 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 North Norfolk District Council shall pay to Mr Ryan Bailey, 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.
14. The applicant is now invited to submit to North Norfolk District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Dan Szymanski

INSPECTOR