
Costs Decision

Site visit made on 17 December 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2020

Costs application in relation to Appeal Ref: APP/G1630/W/19/3237630 Sandycroft Cottage, Dancy Road, Churchdown, Gloucester GL3 1HP

- 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 Russel Stevens for a full award of costs against Tewkesbury Borough 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 a proposal described as "Erection of two self-build dwellings with associated parking and other works".
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may 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.
3. The application for costs relies on substantive matters relating to the planning merits of the appeal. The applicant cites that there was a lack of communication from the Council during the determination of the planning application which prevented the applicant from responding to consultee comments. Whilst I note that there was a protracted period of time during which the planning application was considered, I also note that there were some discussions between the appellant and the Planning Officer, as well as between the Council's Drainage Engineer and the applicant's drainage consultant. Furthermore, I note that even following the submission of additional information, the application was still refused.
4. Consequently, notwithstanding the delays, even following discussions and additional information, the decision would have been to refuse the application. Thus, I am not convinced that making a decision in a shorter time or further communication from the Council, would have avoided the appeal.
5. There is further reference to the recommendation to refuse the planning application being contrary to advice given at the pre-application stage. It is commented that the pre-application advice given was that the principle of the development of two dwellings was acceptable, subject to further information in respect of highways matters. The applicant contends that the application was

unreasonably delayed by the matter of the effect on the character and appearance of the area not being raised earlier.

6. In this respect, I note that the Council do not dispute that no issues were raised in respect of the layout of the proposed development at the time that the pre-application advice was given. Whilst I acknowledge that it is unfortunate that concern in respect of this matter was not raised at this early stage, I am also conscious that pre-application advice is provided by the Council on a without prejudice basis, comprises the informal advice of a planning officer and does not consist of a formal determination by the Council.
7. There is also reference to the matter of surface-water drainage not being raised at pre-application stage. However, the Council state that this matter was highlighted following formal consultation on the planning application, which would not have taken place at the time of the pre-application enquiry. On this basis therefore I do not consider that the failure to identify these matters rises to the level of unreasonable behaviour on the part of the Council.
8. The applicant further contends that the Flood Risk Management Engineer made inaccurate assertions in regard to the impact of the development. I note that the applicant's consultants' view is that the development would be at a low level of risk from all flood sources. However, from the appeal documentation, it is clear that having reviewed all of the technical information that was submitted, the Engineer's opinion remained that it had not been demonstrated that the development would not be at an unacceptable risk of flooding. This would, I am sure, be a view based on both technical information and local knowledge of the site and surrounding drainage circumstances. As such, whilst I have disagreed and found that there would not be an unacceptable risk of flooding, I am of the view that the Engineer has not been unreasonable in the approach to commenting on the scheme.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Martin Allen

INSPECTOR