



Costs Decision

Site visit made on 9 March 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 09 April 2020

Costs application in relation to Appeal Ref: APP/A0665/W/19/323691622 The Farmer's Arms, Chester Road, Kelsall, Chester CW6 0SJ

- 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 Punch Partnerships (PML) Ltd. against Cheshire West & Chester Council.
- The appeal was against the refusal of the Council to grant planning permission for development described on the application form supporting application Ref 19/00694/FUL, dated 15 February 2019, as 'construction of two dwellings (Use Class C3), together with associated car parking, landscaping and other ancillary works on Land to the rear of the Farmer's Arms Public House, Chester Road'.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²
3. The appellant states that their application for a full award of costs is on substantive grounds. Principally the appellant contends that the development proposed via application Ref 19/00694/FUL should clearly have been permitted, having regard to the development plan, national policy and other material considerations.³ Specific concern is raised regarding the Council's position in respect of parking provision and highways effects, planning matters addressed in detail in the associated appeal. Whilst determining a costs application and appeal decision are separate processes, the two must reconcile logically. Therefore, as I have reasoned that the development proposed would not be acceptable, I cannot rationally support the appellant's argument for an award of costs that the scheme should clearly have been permitted.
4. However the appellant's case for costs is more detailed. Various concerns are raised regarding the Council's handling of the application, chiefly that some 25 weeks elapsed between the application being submitted and an appeal being made (within which time the Council failed to reach a decision, the statutory

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

³ The first example of unreasonable behaviour that may give rise to a substantive award against a local planning authority in PPG Reference ID: 16-049-20140306.

timescale for a decision in respect of the development proposed being 8 weeks).⁴ During that time the appellant made numerous enquiries of the Council as regards progress. It is of no real consequence whether those enquiries related the allocation of a dedicated case officer or to the likely timing of a decision; the two amount to effectively the same thing. With regard to relevant elements of the PPG,⁵ and to correspondence from the Council of 24 April 2019 in particular, the appellant avers that the Council failed to adequately justify a potentially indefinite delay. Further the appellant avers that the Council inappropriately justified their actions by reference to their decision notice of 5 November 2019, refusing permission for a later duplicate application at the appeal site (Ref 19/03414/FUL). In that context the appellant's frustration at the course that the application took is understandable.

5. In and of itself a local planning authority's failure to meet the statutory timescale for determination does not amount to unreasonable behaviour; if that were the case an award of costs would be justifiable in respect of all appeals against non-determination. The Council's correspondence of 24 April 2019 explains how the Council was 'experiencing particularly high volumes of complex work', that they were committed to discussing any 'issues with the application' identified during their determination, and at that juncture were working '8 weeks behind'. That, in my view, represents a proper and frank explanation of circumstances at that point in time.⁶ At appeal the Council have further explained how those circumstances arose in large part on account of the inability to fill vacancies, which in my experience is not uncommon nor specific to Cheshire West and Cheshire Council.
6. I accept the Council's correspondence of 24 April 2019 did not set a date when a decision would likely be reached, thereby leaving the appellant in a somewhat uncertain position. The Council's refusal of duplicate application Ref 19/03414/FUL on 5 November 2019 does not remedy any shortcomings in the handling of application Ref 19/00694/FUL, of which there were evidently some as set out above. However, in my view the Council's subsequent refusal of permission for the same proposed development is relevant for three reasons.
7. Firstly that latter decision demonstrates that the delays encountered in the determination of application Ref 19/00694/FUL were temporary rather than persistent. The latter application was determined within eight weeks, and the appellant therefore ultimately received a formal decision from the Council in respect of the development proposed. Secondly the reasons for refusal given in respect of the latter application are consistent with those set out in the Council's appeal statement in respect of application Ref 19/00694/FUL. It cannot therefore reasonably be said that better communication would have enabled the appeal to be avoided.⁷ Thirdly an appeal would also have been necessary in respect of the Council's decision of 5 November 2019, which

⁴ The application being submitted to the Council on 19 February 2019, the appeal being made on 10 September 2019. The statutory timescales for decision-taking are set out in article 34 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended.

⁵ Reference ID: 16-048-20140306 sets out, amongst other things, 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'. A 'failure to adhere to deadlines' is also given in PPG Reference ID: 16-047-20140306 as an example of behaviour that may give rise to a procedural award of costs against a local planning authority.

⁶ Whilst arrived at independently, that position aligns with the Inspector who determined appeals Ref APP/A0665/W/19/3222690 and APP/A0665/W/18/3218509.

⁷ As is referenced in PPG Reference ID: 16-048-20140306.

emerged in the course of the associated appeal, with regard to the appellant's principal position that the development proposed should clearly have been permitted (as set out in paragraph 3 of this decision).

8. Turning to the Council's case at appeal, the nature of the development proposed and surrounding context are explained in detail, and the appellant does not appear to allege that there are factual inaccuracies in that regard. The Council have held the development proposed up against relevant elements of the development plan and local guidance, and given thorough consideration to the appellant's evidence. In that context the appeal revolved around matters of planning judgement, with the appellant's position evidently differing from that of the Council. However in that context, based on all the evidence before me, no action or inaction taken by the Council in this instance amounts to unreasonable behaviour directly resulting in unnecessary or wasted expense.

Conclusion

9. Having taken account of all other matters raised and with regard to relevant elements of the PPG, for the above reasons I conclude that an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR