
Costs Decisions

Site visit made on 17 December 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th May 2020

Costs application in relation to Appeal Ref: APP/M9496/W/19/3238015 Land Formally Bleaklow Farm, Bramley Lane, Hassop DE45 1NS

- 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 P Hunt, C/o Coverland UK Ltd, for a full award of costs against the Peak District National Park Authority.
 - The appeal was against the failure to give notice within the prescribed period of a decision on a s73 planning application for variation or removal of condition 1 on approved application Ref NP/DDD/1117/1128 - removal or variation of condition 2 on NP/DDD/1116/1095 (demolition of farmhouse and erection of replacement dwellinghouse; demolition and rebuilding of stables to form additional living accommodation; erection of stables buildings and garage), without complying with condition 1 attached to planning permission Ref NP/DDD/117/1128, dated 21 December 2017.
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Costs application in relation to Appeal Ref: APP/M9496/W/19/3238013 Land Formally Bleaklow Farm, Bramley Lane, Hassop DE45 1NS

- 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 P Hunt, C/o Coverland UK Ltd, for a full award of costs against the Peak District National Park Authority.
 - The appeal was against the failure to give notice within the prescribed period of a decision on a planning application for change of use of agricultural barn to 3 No letting rooms.
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Decisions

Costs application 3238015

1. The application for an award of costs is allowed in the terms set out below.

Costs application 3238013

2. The application for an award of costs is allowed in the terms set out below.

Reasons

3. The Authority failed to determine both appeals for the same reasons. The reasoning that has led to my conclusions applies equally to both costs applications.
4. Irrespective of the outcome of an appeal the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved

- unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.¹
5. Unreasonable behaviour can relate to procedural matters (ie the appeal process) or substantive matters (ie issues related to the planning merits of the appeal).
 6. One of the examples relating to procedural matters, provided in the PPG, of behaviour by local planning authorities that may be deemed to be unreasonable, is failing to determine planning applications and delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.²
 7. The applicant contends that an award of costs is justified for the following reasons: (i) the officer reports to committee clearly outline why the applications are policy compliant; (ii) committee disregarded professional advice and chose not to deal with the applications as presented; (iii) at the committee meeting of 9 August 2019 members were advised that deferring the applications could result in appeals, during which the appellant would likely point out that the proposals were policy compliant; (vi) members were reminded that they needed to make decisions on the applications before them, that the Highways Authority had raised no objections to the proposals and that the impact of additional traffic is required to be 'severe' to justify refusing an application on such grounds, (v) members resolved to defer the applications in order to seek 1) further details of the overall scheme, including access arrangements, 2) clarification on changes to a plan for garage/games room, 3) clarification on additional parking and extension of rear curtilage, 4) clarification of extension of curtilage at front of property and 5) intended use of a barn.
 8. In respect of points 1 and 5 above, the applicant contends that members were requesting information regarding what may happen at the site at an indeterminate point in the future; such information could not be provided as it does not exist. In addition, various scenarios regarding access had been put to committee and the Highways Authority had not objected. As regards point 2, Officers had clarified this point and an amended plan was submitted. In respect of points 3 and 4, these were matters that were not being applied for as part of either of the applications. Thus, the applicant therefore considers that the committee's decision to defer the applications was unreasonable and that the behaviour resulted in an avoidable delay, resulting in the appellant having to rely on the appeal process to determine the applications.
 9. The PPG states that, if it is clear the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. Additionally, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.³ In such cases, if an appeal is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there

¹ Paragraph 030 Reference ID 16-030-20140306 of the PPG, revision date 06 03 2014

² Paragraph 049 Reference ID 16-049-20140306 of the PPG, revision date 06 03 2014

³ Paragraph 048 Reference ID 16-048-20140306 of the PPG, revision date 06 03 2014

were no substantive reasons to justify delaying the determination. Such a decision would consider any unreasonable behaviour on the part of the appellant in causing or adding to the delay.⁴

10. The Council contends that a proper explanation for the applications being deferred was provided in the planning committee meeting minutes of 9 August 2019, ie the request for further information. As part of the appeal, the Council refer to the request for further information as being the reason that it failed to reach a decision on the applications within the relevant period. The Council concludes that in the absence of such information it was unable to fully assess the impacts of the development.
11. In respect of appeal Ref 3238013 I noted that planning legislation allows for the appellant to sub-divide the site into separate planning units. I also expressed my appreciation of the Authority's desire to understand the nature and extent of uses within the wider site in order to fully comprehend likely impacts of the proposals, and my appreciation of the Authority's desire to prevent any breach of planning control. However, in respect of the further information requested by members, I consider that clarification has been provided in respect of the plan, that the appellant has confirmed that their intention is to use the renovated dwelling as permitted within the scope of approved application Ref NP/DDD/1117/1128, ie C3 use class, and that the appellant has made it clear, via the 2 applications, what the proposed uses on the site would be and that both proposals would utilise the approved access south-east of the site.
12. Other than what has been approved and what was applied for, from which the cumulative impacts can be appreciated, in order to determine the proposals, the Authority was not required to consider whether the appellant wishes to use the site, or parts of it, for different uses in the future. In addition, as noted in the Decision for appeal Ref 3238013, if the Authority considers that a breach of planning control has occurred, it has the necessary powers to act to address such matters. The aspects that were being considered as possible breaches of planning control did not form part of the applications. I concluded in the Decision for appeal 3238013 that sufficient information was available to the Council to be able to determine the application. As I have determined appeal Ref 3238015, it follows that I also conclude that sufficient information was available to the Council to determine this appeal.

Conclusion – 3238015 and 3238013

13. Bearing the above points in mind, I consider that the other information the Council requested was not required to determine either application; as such, there was no substantive, justifiable reason to defer determination of the applications. Consequently, I consider that the Council's requests in this regard were unreasonable, which led to it failing to determine the applications within the given time limits. The failure to determine the planning applications resulted in the appellant having to resort to the appeal process, incurring unnecessary and wasted expense. Therefore, I conclude that unreasonable behaviour by the Council resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

⁴ Ditto

Costs Order

14. 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 Peak District National Park Authority shall pay to Mr P Hunt, C/o Coverland UK Ltd, the costs of the unnecessary time spent and the expense incurred by the appellant in the appeals proceedings, described in the headings of this decision, as a result of the unreasonable behaviour outlined.
15. The appellant is now invited to submit to Peak District National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Williamson
INSPECTOR