



Costs Decision

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Costs application in relation to Appeal Ref: APP/H0520/X/19/3235615 Fenside Caravan Park, Puddock Road, Warboys PE28 2UA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr F Adams for a full award of costs against Huntingdonshire 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 a certificate of lawful use or development for the use of land as a touring caravan site for the siting of touring caravans including as a person's sole or main place of residence.
-

Decision

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

Reasons

2. The Planning Practice Guidance ('PPG') 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 background warrants brief summary. In March 1999 planning permission was granted on appeal for the use of the appeal site as a camping and touring caravan site, subject to conditions. Later that same year another decision was issued by the Council varying one of the conditions. The decision made clear that all other conditions previously imposed continued to apply. Planning permission was subsequently granted in 2004 as a 'renewal' of the 1999 permission for a 'touring caravan site'.
4. There followed in 2016 the issue of a certificate of lawful use or development (LDC) for an existing use described as a 'touring caravan site'. This appeal concerns an application made on 19 December 2018 for a LDC of proposed use as a touring caravan site which would in effect be free from any conditions.
5. In a letter to the applicant's agent on 21 January 2019, the Council confirmed that the application was valid and the statutory expiry date for the application was 13 February 2019.
6. When the Council failed to reach a decision, the appeal followed on 19 August 2019. By that time, the appellant had received no indication of the Council's likely decision. The Council had queried the intended occupation and the appellant had responded whilst explaining the questions were irrelevant.
7. The application is for a procedural award following the Council's non-

determination of the application and failure to provide any explanation for the delay or the consideration of the application.

8. The *Appeals* section of the PPG gives examples of the type of behaviour which may give rise to an award of costs against a local planning authority. They are examples only and the list is not exhaustive. The list includes at paragraph 048: *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. 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. If an appeal in such cases 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 were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.*
9. The appellant suggests that the Council failed to provide any explanation for the cause of delay. That is not entirely correct as the Council wrote to the appellant's agent on 5 December 2019 to explain that it currently had a high number of overdue planning applications and was experiencing an unprecedented amount of staff vacancies. The letter was sent before the application was validated, but it made plain that the Council was suffering from a lack of resources with temporary contract staff to be used over the coming months. Thus, the Council had gone some way at the outset to alert the appellant to problems being experienced which could result in delays, but it did not obviate the need to deal with the application within a reasonable timescale.
10. Some progress appeared to be made when the Council queried the description and use applied for, but this did not materialise in a decision or explanation for an ongoing delay. It was only after the appeal was lodged that the Council confirmed that the application would have been refused and explained why.
11. It so happens that the appeal has not been allowed and so the circumstances contemplated in the above example in the PPG are not met. The reasons for dismissal differ from those expressed by the Council with neither party addressing section 193(5) of the 1990 Act, until prompted to do so. The upshot was that the 2016 LDC could not circumvent conditions imposed on an existing permission when those conditions were not expressed to be breached.
12. It is evident that the appeal could not have been avoided by an earlier response or decision from the Council. Whilst I consider that the long delay in dealing with the application without a proper explanation or reaching a decision was unreasonable, I am not satisfied that it resulted in unnecessary or wasted expense in the appeal process. The same arguments would need to have been formulated in an attempt to demonstrate that the proposed use would have been lawful.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

KR Seward INSPECTOR