
Costs Decision

Site visit made on 2 October 2019

by S Thomas BSc (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2020

Costs application in relation to Appeal Ref: APP/J0405/W/19/3232782 Land adjacent to Dairy Farm, High Street, Cublington LU7 0LQ

- 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 Hannington for a full award of costs against Aylesbury Vale 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 planning permission described as construction x 1 4-bed residential dwelling and all ancillary works.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from the appeal.
3. The application for costs was made by the applicant with reference to a failure to determine an application for a 4-bed dwelling house within the required 8 weeks, and the applicant states a further 3 months had passed without a decision. PPG states that if it is clear that a local planning authority will fail to determine an application within the time limits, it should provide a proper explanation. In an 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.
4. Based on the available evidence it is evident that key issues with the application in respect of Highways and Ecology were set out in advance of the 8-week determination date. In light of these issues based on the available evidence it is likely had the original determination date been adhered to given the outstanding areas of concern that the Council had raised at this point the application would have been recommended for refusal.
5. In respect of the Highways issue this required submission of amended plans to reflect the Visibility splay requirements as required by the Highways authority. Therefore, further dialogue and the submission of amended information was

necessary to address this matter. With respect to the Highways objection raised, the Council indicate that pre application advice provided would not have included initial highways comments as this was subject to a separate fee. There is nothing to indicate pre application advice was provided on the scheme by Highways and resultingly their formal comments on the planning application has not caused the applicant unnecessary expense as this was their first formal consultation on the scheme.

6. I consider that the continuing dialogue between the parties has been done in a proactive manner in an attempt to arrive at a scheme that the Council felt able to recommend for approval. The chain of emails indicates ongoing discussions in an attempt to overcome outstanding matters in respect of Highways, Ecology, Heritage and Trees, which to my mind demonstrates a clear line of communication with regards to issues with the application. There is nothing before me to indicate telephone calls and emails were not responded to by the Council. However, whilst this ongoing dialogue was occurring the Council should have requested a formal extension of time to determine the application to provide some certainty to the applicant over likely periods for determination. Notwithstanding this given the ongoing dialogue the applicant would have been aware of the outstanding matters and the need to undertake further consultation with consultees on amended plans/updated information to address areas of concern.
7. The Council indicate that following the last correspondence between the parties on 18th June 2019 up to the submission of the appeal the Council were actively working on resolving outstanding issues with the application and indicate that had the appeal not been submitted they would have been willing to work with the applicant in attempt to overcome outstanding issues. It is evident that in particular the issue regarding Great Crested Newts and Trees had not been satisfactorily addressed at this point and based on this position the Council would not have been in a position to recommend permission be granted. Whilst the position on trees has subsequently been addressed the issue of impact on GCN remained. With this in mind, whilst I acknowledge the frustration of the applicant, I do not consider this amounts to unreasonable behaviour on the Councils part as work was ongoing to address outstanding matters in order to attempt to arrive at a position whereby a positive determination of the application could be recommended.
8. The Council have subsequently in their Statement of Case to the appeal, set out clearly their assessment of the application and the outstanding reason why it would have recommended refusal. I find no unreasonable behaviour in this regard. Therefore, whilst acknowledging the frustration of the applicant this has not caused the applicant any unnecessary or wasted expense during the appeal process.

Conclusion

9. Given this, I am satisfied the Council have behaved reasonably. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

S Thomas INSPECTOR

