
Costs Decision

Site visit made on 19 March 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 02 June 2020

Costs application in relation to Appeal Ref: APP/W0530/W/19/3243498 Land adjacent 39 New Road, Guilden Morden, Royston SG8 0JN

- 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 Rose Lane Gospel Hall Trust, Plymouth Brethren Christian Church (PBCC) for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for erection of barn style Gospel Meeting Hall, parking and access.
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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 application for a full award of costs is on the basis of the actions by the Council. These include procedural and substantive matters, including lack of co-operation, responding in a timely manner, preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The Council has not responded or provided evidence to counter the case set out in the cost application.
4. The PPG indicates that lack of co-operation with the other party or parties may result in unreasonable behaviour¹ and that a local planning authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour². The guidance states that if the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay.
5. The applicants contend that the Council demonstrated a lack of co-operation and did not respond to requests in a timely manner during the course of the planning application on progress and prior to the determination of the application. The Council also failed to provide a proper explanation of why the application was not determined within the time limits.

¹ Paragraph: 047 Reference ID: 16-047-20140306 Revision date: 06 03 2014

² Paragraph: 048 Reference ID: 16-048-20140306 Revision date: 06 03 2014

6. I acknowledge, that the planning application was submitted to the Council in October 2019 and was determined on 4 July 2019. However, the applicants have not provided any substantive evidence on these matters of timeliness, and the evidence is inconclusive as to why the application was not determined until after the statutory timeframe, whether any extension of time was agreed between the parties or as an option at that time why the applicants did not pursue an appeal for non-determination.
7. Nonetheless, whilst I understand the sense of frustration on this, it does appear that the applicants were informed prior to the determination by the Council that the application would be refused. Despite, the Council not providing any contrary evidence to the cost application, as such, it would not be reasonable to conclude that the Council had behaved unreasonably in procedure leading up to the appeal on the basis of the information before me.
8. The applicants also contend that the Council has behaved unreasonable by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise". This is also set out in paragraph 47 of the National Planning Policy Framework (The Framework).
9. The concerns of the Council about the proposal are set out in the officer report and the statement of case. The Council clearly assessed the proposal against policies in the adopted development plan, South Cambridgeshire Local Plan (2018). For the reasons, I have already given in my decision accompanying this cost decision, I agree with the council that there were sufficient grounds for refusing permission as it would not be in accordance with Policy S/7, and the development plan read as a whole. Furthermore, the decision outlines the consistency of the development plan with the Framework. The applicants refer to comparable cases and appeal decisions, the Council in their statement of case have set out the reasons why these should be discounted. In any event, each case is determined on its own merits.
10. Consequently, these matters which have been raised were one of a fundamental disagreement between the parties which could have only been resolved by way of an appeal and as such, I find the Council did not act unreasonable and the reason for refusal as set out was substantiated.
11. Furthermore, the PPG³ makes it clear that "*Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application*".
12. In terms of the procedural matters of the appeal, the applicants maintain that the Council has not responded in a timely manner to meet appeal deadlines and it has resulted in considerable amount of time liaising with the Council and Planning Inspectorate to move the appeal forward. The appeal was received

³ Paragraph: 050 Reference ID: 16-050-20140306 Revision date: 06 03 2014

and valid with a starting date of 21 January 2020 of which the Council were requested to submit the questionnaire by 28 January 2020, this was not received and followed up by several requests by the Planning Inspectorate during February and March. The Council did not respond until 11 March 2020, of which they apologised and advised that unfortunately the appeal was not allocated to anyone and has subsequently slipped through the net. The questionnaire, supporting documents and statement of case were subsequently received 16 March 2020. I have no evidence, or reasons why the Council did not send these to the applicant's agent at that time.

13. I accept that during the appeal process the Council did not provide the questionnaire and supporting evidence in a timely manner and a comprehensive explanation was not forthcoming for some time. I am, therefore not satisfied that the Council fully co-operated, in a timely manner, throughout the appeal process. The period of unexplained delays and lack of co-operation is unacceptable, and I consider this to amount to unreasonable behaviour by the Council during the appeal process but not during the procedure leading up to the appeal.
14. Turning to the matter of wasted expense, the applicants suggests they have incurred additional expense in professional services, and specifically planning consultancy services. This includes advice, preparation of the appeal, an appeal statement and reviewing third party comments, the questionnaire and the Council's statement of case. I acknowledge that the applicants are a registered charity, however this is a neutral factor and not a principle planning matter.
15. The applicants submitted a statement and supporting information as part of the appeal submission, of which is required. This also acknowledges references to those third-party comments made on the planning application itself. Following this, despite the late submission of the questionnaire and statement of case, the appellant provided final comments, however, this response is straightforward and appears to not involve further assessment other than a rebuttal of the Council's position. Furthermore, the choice of a professional service of a planning consultancy would be a matter for the applicants at that time prior to the submission of any appeal.
16. As a result, although I find that the Council acted unreasonably in its handling of the procedural matters of the appeal itself, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, an award of costs is not justified.

KA Taylor

INSPECTOR