



Costs Decision

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2020

**Costs application in relation to Appeal Ref: APP/W0530/W/19/3244700
Tomlinson Steel Ltd, Unit 32 Eastern Counties Leather Industrial Estate,
London Road, Pampisford, Cambridge, Cambridgeshire CB22 3FX**

- 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 ECL Pension Fund for a full award of costs against South Cambridgeshire 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 for the demolition of existing unit 32 and its replacement.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
4. The PPG advises 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 as to why there is a delay in the determination of the application. Furthermore, in an appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit.
5. The Applicant sets out that the Council failed to determine the planning application within its time period. Furthermore, the Council failed to answer any telephone calls or respond to any emails both during and after the end of the statutory time period asking for information as to the current state of the application.
6. The Council have not responded to this costs application, but within their appeal statement it is clear that they wished to have a consultation response from the Environment Agency regarding contaminated land matters to enable it

to make an informed decision. That said, it is also significant that the Council ultimately had no objections to the appeal proposal.

7. As I understand it, the statutory determination period for the application expired on 14 October 2019 and no extension of time to determine the application had been requested by the Council.
8. Whilst I can understand why the Council would wish to have the comments from the Environment Agency, from the evidence before me, the Council failed to communicate this with the Applicant despite several requests for an update on the progress of the application.
9. This lack of communication over a period of time left the Applicant with no choice but to appeal against the failure of the Council to determine the application. Had the Council communicated with the Applicant, then this may have avoided the need for this appeal.
10. To my mind, this is a clear example of unreasonable behaviour which has forced the Applicant to incur unnecessary costs in preparing and dealing with the appeal.

Conclusion

11. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and therefore a full award of costs is justified.

Costs Order

12. 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 South Cambridgeshire District Council shall pay ECL Pension Fund, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The Applicant is now invited to submit South Cambridgeshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Chris Forrett

INSPECTOR