



Costs Decision

Site visit made on 02 June 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 6th July 2020

Costs application in relation to Appeal Ref: APP/A0665/W/19/3241320 The Beeches, Common Lane, Duddon, Chester CW6 0HD

- 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 M Greaves for a full award of costs against Cheshire West & Chester 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 to demolish existing stables and replace with garages, office/ hobby room and log store.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (the 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. Therefore, an application for costs needs to clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. In respect of cases where the Council failed to determine the application, the PPG states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the appellant a proper explanation. In any appeal against non-determination, the planning authority is required to explain why it failed to reach 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. In this case, the application dated 21 March 2019 was received by the Council on 25 March 2019, with the acknowledgement to this effect dated 16 April 2019. At that time, the Council advised that it could be several weeks until the case officer made contact and that, if a decision had not been made by 20 May 2019, then the applicant would have a 6 month period within which to appeal against non-determination. On 29 May 2019, the Council advised that the processing of the application was delayed and, although it was moving forward in the queue, it could be a further 2 to 3 months before a case officer was available.
5. The applicant contacted the Council on 27 August 2019, expressing concerns over the delay in determining the application and requesting confirmation that 19 November 2019 would be the last date by which an appeal could be made

against non-determination of the application. A case officer was subsequently allocated and there is correspondence dated 13 November 2019 discussing the planning merits of the proposal and indicating that the Council would be likely to refuse the application in its current form. However, given that the deadline for appealing the decision was imminent, at this point the applicant declined to wait for the Council to determine the application and made the appeal.

6. The applicant's frustration relating to the processing of the application and the Council's failure to determine it in a timely fashion is understandable. However, the evidence indicates that the delay in processing and the failure to determine it was a result of resourcing issues. While this is regrettable, the Council did explain the delay and in this respect it did not behave unreasonably.
7. I appreciate that the case officer had initially suggested that the proposal would affect the Green Belt. However, he quickly clarified that the site was not in the Green Belt, but nevertheless confirmed that the application would be refused on grounds relating to the impact on the countryside. At this point, the applicant chose to exercise his right of appeal against non-determination.
8. In its evidence to the appeal, the Council confirmed that it would have refused the application if it had determined it. Therefore, even if the Council had determined the application within the prescribed time, the appeal could not have been avoided. In its appeal statement, the Council set out the reasons that it would have refused the application, with reference to the relevant development plan policies. As can be seen from my appeal decision, I agreed with the Council's assessment and dismissed the appeal accordingly. It therefore follows that the reasons that the Council would have refused the application could be substantiated.

Conclusion

9. Therefore, I find that unreasonable behaviour on the part of the Council, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Sarah Manchester

INSPECTOR