



Costs Decision

Hearing Held on 14 January 2020

Site visit made on 14 January 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 18th August 2020

Costs application in relation to Appeal Ref: APP/Z1510/W/19/3236460 Halstead Hall, Mount Hill, Halstead C09 1SL

- 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 R Catchpole of Stow Healthcare Group for a partial award of costs against Braintree 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 proposed development described as 'demolish outbuildings, extend and refurbish existing redundant building to form 25 bed dementia unit and erect bin and cycle stores, erect 30 bungalows and layout associated car parking, drainage and landscaping'.
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Decision

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

The submissions for Mr R Catchpole of Stow Healthcare Group

2. The application was submitted in writing in advance of the hearing. In summary, the applicant contends that the respondent: (a) unreasonably delayed the application and refused to cooperate; (b) applied unsubstantiated, inaccurate and vague assertions; and (c) lacked consistency in its decision-making.

The response by Braintree District Council

3. The Council made oral submissions in response. I now set out the substance of that response.
4. It is conceded that there were delays to the determination of this application. In part this was due to the pre-election period and a shortage of staff resources due to dealing with other matters, including other appeals and inquiries.
5. The principle of development within this location is not acceptable. It is not unreasonable to form a different view. The proposal amounts to unacceptable development that is not outweighed by the benefits of the provision of a specialist dementia care unit.
6. 'Enabling development' solely refers to heritage assets. Within the National Planning Policy Framework, the sole references to 'enabling development' concern heritage assets. The planning obligation does not safeguard the provision of the specialist dementia care unit.
7. There are no exceptional circumstances to justify the dawn and dusk bat emergence surveys being subject of control by condition.

8. The Council has not acted unreasonably. Whilst there has been delay the respondent contests that there has been any additional work undertaken that is over and above that required for the submission of the appeal and the statement of case. The application would have been refused in any event.

Reasons

9. The 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.
10. The application for costs is in two parts. Firstly, in relation to procedural matters, the applicant cites a lack of cooperation on the Council's part to determine the application within the prescribed period and to communicate a proper explanation for the delay. Secondly, with regards to substantive matters, it is the applicant's case that the respondent was inconsistent, inaccurate, unsubstantiated and vague in its decision-making process.
11. The PPG sets out scenarios when a local planning authority's handling of the planning application prior to the appeal may lead to an award of costs. It 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. 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'*.
12. In respect of the respondent's failure to determine the application within the prescribed period which led to the appeal against non-determination, the original period for determination lapsed on the 21 November 2018. Nonetheless, the applicant agreed to a number of extensions of time. In doing so, the applicant submitted a number of revised plans. Albeit the respondent did not accept all of the revised plans, it was minded to accept the revised plan which sought to overcome concerns regarding highway safety matters. In due course, around the 7 March 2019, the outstanding objection of the Highway Authority was resolved.
13. Further delay to the determination of the application was in part due to the Council's pre-election period (Purdah) and staff shortages due to a number of appeal hearings and inquiries. However, whilst the Planning Team Leader indicated the application would be recommended for refusal, there is no clear evidence to refute the applicant's assertion that no explanation for the delay with the application was given from the 18 April 2019 and throughout June and July. This period of delay following the end of Purdah is unacceptable, and I consider that this amounts to unreasonable behaviour by the respondent.
14. The respondent relies, in part, upon the failure of the applicant to engage in the pre-application process. However, this of itself does not provide justification for not dealing with the application in a timely manner.

15. During the appeal, the respondent has provided timely and comprehensive explanation and reasons as to why it considered the proposed development to be unacceptable. Thus, I am satisfied that the respondent has acted in a timely and cooperative manner throughout the appeal process.
16. Turning to the substantive matters, notwithstanding the ecology and biodiversity conditions attached to the outline planning permission for the nearby development¹, there is limited evidence before me to demonstrate that the particular circumstances relating to protected species is comparable between the approved and proposed schemes. This is particularly relevant given that the appeal scheme concerns the extension and refurbishment of an existing building, Green Lodge, where evidence of a bat roost has been identified. Given these ecological site specific circumstances, I do not consider that the respondent has acted unreasonably in this regard, and indeed my findings on this matter concur with the respondent.
17. However, in terms of the accessibility of services and facilities, I do accept that there is little difference in terms of the proximity of those services and facilities to the appeal scheme and the approved scheme for approximately 292 dwellings. To my mind, this demonstrates an inconsistency in approach by the respondent to similar schemes.
18. The applicant refers to the inaccuracy of the respondent when dealing with 'enabling development'. I have had regard to the appeal case provided in support of the applicant's case² Notwithstanding the clear conflict between the parties regarding the application of this term, the Council conceded that the works to Green Lodge would not be viable and thus viability was a key issue in this appeal. The viability assessment and rebuttal evidence to the respondent's case would have been required in any event.
19. Turning to the matter of unnecessary or wasted expense, the respondent would have refused the application in any event. Given the differences between the applicant and the respondent on the merits of the proposed development, it would appear unlikely that a swifter decision by the respondent would have led to a different decision and consequently avoided the appeal being made. Indeed, on the basis of the evidence before me, I have concurred with the Council on a number of the main issues in dispute between the parties.
20. To my mind, the applicant would nonetheless have chosen to address and provide evidence for the range of main issues in dispute. It appears to me that, in reality, there has been little extra work as a result of the appeal. Therefore, whilst the delay by the respondent was unwarranted, it has not been demonstrated that this directly led to wasted or unnecessary expense in making the appeal.
21. Accordingly, whilst I find that the respondent has acted unreasonably in its handling of the planning application, it has not caused unnecessary or wasted expense, as described in the Planning Practice Guidance. Therefore, an award of costs is not justified.

E Brownless - INSPECTOR

¹ Planning Reference 14/01580/OUT

² APP/J3720/A/11/2153222 Land off Manor Road, Stratford-upon-Avon