



Costs Decision

Site visit made on 11 August 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Costs application in relation to Appeal Ref: APP/H2835/W/20/3248384 Farm Building, Vicarage Farm, Wellingborough Road, Wollaston, Wellingborough NN29 7PY

- 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 SRJ Vicarage Limited for a full award of costs against the Borough Council of Wellingborough.
 - The appeal was against a failure to give notice within the prescribed period of a decision on a prior approval application required under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

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

Preliminary Matter

2. Although the costs application is made in the name of SRJ Vicarage Limited, on the appeal form Mr Adrian Lewis is said to be of SRJ Vicarage Limited, I have therefore proceeded with the costs application as being made by Mr Adrian Lewis.

Reasons

3. 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.
4. Although the local planning authority (LPA) has not provided a rebuttal to the applicant's costs application, I have had regard to their submissions in respect of the associated appeal.
5. Prior to the refusal notice being issued, the applicant sent an e-mail to the LPA providing a timeline in respect of the submission of the application and stating that in their view the 56-day period had elapsed. By return e-mail the LPA confirmed its disagreement with that view, and shortly after issued the refusal notice.
6. Based on my determination of the associated appeal, I have found that the LPA missed the 56-day deadline for notifying the applicant as to whether prior approval was given or refused, which means that prior approval is deemed to be granted.

7. Also, prior to the applicant submitting the appeal a further attempt was made to ask the LPA to take the proposed appeal information into account. Nevertheless, the LPA has maintained its position that its refusal notice was within the 56-day statutory timescale.
8. Consequently, the only reasonable options available to the applicant were to submit an application for a lawful development certificate (LDC) for the proposed development, on the basis that the development applied for had become lawful due to the LPAs failure to respond within the 56-day statutory period, or lodge an appeal, as was done.
9. However, in respect of the first option, given its stance in light of the information put forward by the applicant, prior and after the LPA dispatched its refusal notice, it seems unlikely that the LPA would have changed its view and supported an LDC.
10. The PPG defines the procedural matters as being those at the appeal, rather than during the consideration of the application. However, this does not preclude me from taking into account behaviour at the time of the application in considering a costs application. Examples of behaviour where a LPA could be considered to have acted unreasonably include: 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' and acting contrary to, or not following, well-established case law.
11. The associated appeal does not turn on the merits of the case, but I have found that due to the LPAs failure to respond within the 56-day statutory period, planning permission is deemed to be granted. In particular, the Council's position on the application being received on the 2 January 2020 is unreasonable because there was nothing expressly excluding the applicant from submitting the application through the letter box for the Council offices a number of hours before the office closed on Christmas Eve. There were also a number of days between Christmas Eve and 2 January 2020 when the Council had chosen not to open but which, nonetheless, were not weekends, public holidays or bank holidays. Overall, the Council failed to show why its interpretation of the timeline was a reasonable definition of when the application was 'received'. This resulted in the applicant lodging an appeal which has delayed development which should have been permitted.
12. In light of the above and applying the principles established in *Murrell v SSCLG* [2010]¹ the time between the application being posted at the Council offices and the LPA processing it did not 'stop the clock' on the 56-day statutory period. Therefore, the Council acted contrary to well-established case law.
13. Based on the foregoing, it is clear that the applicant had little viable option but to appeal, despite having taken all reasonable steps to avoid such a situation. As a result, the applicant has been put to the cost of an appeal that should have been avoided by the LPAs acceptance that the 56-days had elapsed.
14. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

¹ [2010] EWCA Civ 1367

Costs Order

15. 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 the Borough Council of Wellingborough shall pay to Mr Adrian Lewis, the costs of the appeal proceedings described in the heading of this decision.
16. The applicant is now invited to submit to the Borough Council of Wellingborough, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal

INSPECTOR