



Costs Decision

Hearing Held on 25 August 2020

Site visit made on 25 August 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2020

Costs application in relation to Appeal Ref: APP/P2935/W/19/3242209 Land South of Woodside Cottage, Bardon Mill, Northumberland.

- 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 Stuart Furlong of MW Furlong & Co for a full award of costs against Northumberland County Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of rural worker's dwelling.
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Decision

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

Submissions

2. The costs application and the Council's response were submitted in writing in advance of the Hearing.

Reasons

3. The Planning Practice Guidance (the Guidance) 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.
4. The basis for the appellant's claim for costs is that the Council provided no reasons for refusal. He also submits that the Council has failed to exercise its duty to determine the planning application in a reasonable manner, including providing clear reasons for its objections and providing adequate information on the likely timescale for receiving a decision.
5. The Council submits that the delays and lack of substantive feedback in relation to the proposal were due to the personal circumstances of the case officer and a lack of resources to reassign the case. However, the appellant rightly states that the application for an award of costs is made against the Council and not the individuals involved. It is the Council's responsibility to ensure that adequate support and resources are available to progress planning applications and in this instance it has failed to do this.

6. As can be seen from my Appeal Decision, I have dismissed this appeal in respect of whether there is suitable accommodation available in the area. It could therefore be argued that the Council's behaviour has not led to an appeal which could otherwise have been avoided. However, the appellant had to submit an appeal against non-determination of the planning application to ascertain the views of the Council about this matter. Whilst the appeal has been dismissed, I consider that the appellant was in essence denied the opportunity to make an informed decision in terms of whether he should pursue the appeal, including the employment of a consultant, owing to the lack of certainty about the Council's position relating to the planning application. On that basis, I consider that the unreasonable behaviour of the Council has led to the appellant incurring unnecessary expense in progressing this appeal. Indeed, the Guidance states that an example of a Council's unreasonable behaviour which may result in an award of costs is a *"delay in providing information or other failure to adhere to deadlines"*.
7. The Guidance also refers to examples of unreasonable behaviour including deliberately concealing relevant evidence at the planning application stage and introducing fresh and substantial evidence at a late stage.
8. With regards to the Report undertaken by Alan Jackson on behalf of the Council, this was a fundamental element of the Council's concerns but the appellant had to submit a Freedom of Information Request to obtain a copy of this at the application stage. Whilst this report was commissioned by the Council and included sensitive financial information, this sensitive information was provided by the appellant and I therefore consider it unreasonable that the Report was not made available to him as part of the normal planning application process. Although the Council states that this would have been provided as part of the appeal process, the lack of a decision on the application means that the appellant would have had to submit an appeal to obtain this information as well as identifying the Council's reasons for refusal based upon it.
9. The consultee objections in relation to contaminated land were also only made available to the appellant following the appeal, necessitating the commissioning of a Ground Gas Risk Assessment. However, it would have been appropriate to require this Assessment under the normal consideration of a planning application. On that basis, the appellant has not been put to extra cost with regards to the preparation of this Assessment which would have been required in any event. That said, this does not mitigate the unreasonable behaviour of the Council in respect of the late submission of this evidence as part of the appeal process. Furthermore, I have concluded that the Council's concerns on this matter could be addressed by a planning condition, and this matter could therefore have reasonably been addressed prior to the appeal on the basis of evidence provided by the appellant.
10. The appellant has provided the Council with ample opportunity to progress the planning application, and on that basis I consider that the appeal was not submitted prematurely. The Council's failure to reach a decision on the application and providing substantive and timely reasons for this represents unreasonable behaviour which has led to the appellant incurring unnecessary expense in progressing this appeal. On that basis, I consider that an award of costs is justified, with the exception of costs incurred in preparing the Ground Gas Risk Assessment.

Costs Order

11. 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 Northumberland County Council shall pay to Mr Stuart Furlong of MW Furlong & Co the costs of the appeal proceedings described in the heading of this decision, except for the costs incurred in the respect of the preparation of the Ground Gas Risk Assessment; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the 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.

David Cross

INSPECTOR