
Costs Decision

Site visit made on 4 September 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 7th December 2020.

Costs application in relation to Appeal Ref: APP/D1265/W/20/3254197 Land West of Cattistock Road, Maiden Newton DT2 0AG

- 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 Raymond McIntyre (Devon & Dorset Properties Ltd) for a full award of costs against Dorset 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 consent, agreement or approval to details required by a condition of a planning permission.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The applicant contends that the Local Planning Authority (LPA) acted unreasonably by failing to determine the application and not dealing with the application in an efficient or timely manner. The PPG sets out that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
4. I have dismissed the appeal due to the proposal not conforming to the outline permission, a matter not raised by the LPA until asked for comments during the appeal process. Compliance with an outline permission is fundamental to the success or otherwise of any reserved matters application, and is a matter that should have been identified during the application process to avoid abortive work by both the LPA and applicant on an application that could not be approved. This was unreasonable behaviour on the part of the LPA.
5. Nevertheless, the applicant disputed that the proposal did not conform to the outline permission and therefore, if the LPA had refused the application on these grounds, an appeal may still have been submitted. Consequently, it has not been demonstrated that unnecessary or wasted expense was incurred as a result of this unreasonable behaviour.

6. The LPA took a considerable time to start dealing with the detail of the scheme and did not determine the application within the statutory time period. However, the timelines provided by both parties demonstrate that communication took place during the application process, including the acceptance of amended plans. These discussions continued through the first nationwide lockdown due to the Covid-19 pandemic, which has had significant impacts on the way that some LPAs were able to operate. Consequently, while the LPA has clearly had significant issues around processing applications, it nevertheless gave the applicant the opportunity to resolve the matters raised. Therefore, the delays do not amount to unreasonable behaviour.
7. Furthermore, the evidence before me is that, before the appeal was lodged, the applicant was aware that Historic England objected to the amended plans, and the LPA had advised the application would be recommended for refusal. Therefore, even if the LPA had determined the application, the applicant may still have made an appeal. It has not therefore been demonstrated that the LPA's delays and failure to reach a decision resulted in unnecessary or wasted expense by the applicant.
8. The applicant was clearly concerned through the application process that their outline permission might expire before it the reserved matters application was determined. The application had been made within the 3-year period required by condition 3 of the outline permission however. There is no requirement in the outline permission that the reserved matters had to have been approved, or an appeal lodged, within the same period. Therefore, it was not necessary for the applicant to appeal before the end of the 3-year period in order to keep the permission 'alive'.
9. I note that the applicant decided to submit a duplicate application during the 3-year period, however there is no substantive evidence before me that it incurred an application fee, or that any further information was produced beyond what had already been submitted for the original application or this appeal. Therefore, it has not been demonstrated that any unnecessary or wasted expense arose from the duplicate application.
10. Ecological mitigation and archaeological investigation were required by conditions 7 and 16 on the outline permission. The cost of undertaking these works would therefore have been incurred whenever the development was implemented. There is no evidence before me that any consultants were instructed or that any wasted expense has been incurred in abortive works. Nor has the applicant explained what 'substantial additional costs' would be incurred if the works were carried out later than they had provisionally planned. Consequently, it has not been demonstrated that any unnecessary or wasted expense resulted from the delay in carrying out these works.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

L McKay

INSPECTOR