



Costs Decision

Site visit made on 18 January 2021

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Costs application in relation to Appeal Ref: APP/R0660/W/20/3261166 Broadheath Farm, Macclesfield Road, Over Alderley SK10 4SN

- 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 Tom Gardiner for a full award of costs against Cheshire East 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 extend the existing farmhouse, conversion of the existing brick-built barn to provide a second dwelling and erection of a new third dwelling within a courtyard formation following repositioning of the existing northern access and demolition of all other existing buildings and structures (c. 1000m²).
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for an award of costs is made on the basis that the Council did not complete the pre-application process in a timely manner. It is also alleged that the Council's approach to determining the application was mis-guided. As a result, it is considered that the need to make the appeal represents a wasted expense.
4. The Council have accepted that they did not fully complete the pre-application advice process. However, whilst the national guidance encourages the use of pre-application advice it is not a required element of the development management process. Issues with the handling of the pre-application process are not a matter for a Section 78 appeal but are matters that would need to be taken up with the Council in the first instance.
5. Moreover, any advice given in the pre-application process represents the informal view of Officers and does not predetermine the formal decision of the Council on any later application. So even if the process had been completed it would not necessarily mean that the necessity for an appeal would have been avoided. In any case the fact that the pre-application process was not formally

completed did not lead to the necessity for the appeal which was due to the non-determination of the application.

6. In responding to the appeal, the Council's statement sets out the reasons why the Council would have refused permission had an appeal against non-determination not been submitted. The Council's putative reasons for refusal cover matters relating to the development's location in the Green Belt (inappropriateness and openness) and also its design and its impact on the landscape character and appearance. Substantive reasoning for this is set out in the statement, and the policies within the development plan, to which the Council considered the scheme would be contrary, are set out.
7. The appellant considers that the Council's application and interpretation of Green Belt policy is mis-guided particularly in relation to openness. In my decision, unlike the Council, I have found that the scheme would improve the openness of the Green Belt, but the interpretation of policy is ultimately one for the courts to decide. Even if the courts were to determine that the Council's interpretation in relation to openness was wrong, given the Council had other concerns with the proposal it would not have necessarily meant the proposal would have been considered acceptable. The weight to be given to various matters in the appeal are a matter of planning judgement and whilst the appellant may not agree with the Council reasoning, or the weight given by them to various aspects in the balancing exercise, it does not mean that the Council has acted unreasonably.
8. Overall, I consider that the Council has provided substantive reasoning for why permission would not have been granted, had the application been determined within the relevant time period. In the light of this, although the appeal is against non-determination, as the Council would have refused the application, the cost of the appeal does not represent wasted or unnecessary expense.
9. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

Alison Partington

INSPECTOR