

Costs Decision

Hearing Held on 14 and 15 January 2021

Site visit made on 18 January 2021

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Costs application in relation to Appeal Ref: APP/V0510/W/19/3243700 Land off Wisbech Road, Littleport, Cambridgeshire CB6 1RA

- 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 Peter Preston for a full award of costs against F P McCann Limited.
 - The Hearing was in connection with an appeal against the failure of the East Cambridgeshire District Council to issue a notice of its decision within the prescribed period on an application for planning permission for change of use of agricultural land to industrial (Class B2) use and erection of a concrete manufacturing facility, with associated engineering and accommodation works and extension to an existing building and travelling crane rails.
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) states that parties in planning appeals normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. Awards of costs against appellants may be either procedural, in regard to behaviour in relation to completing the appeal process, or substantive, with regard to the planning merits of the appeal.
3. This costs application was made on behalf of Mr Preston, an interested party. It was made in writing during the period when this appeal was progressing under the written representations procedure. This procedure was later changed to a Hearing. Little further was added by either party at the Hearing and so my decision is based on the written application, to which there was no rebuttal.
4. The basis of this costs claim is that there had been unreasonable behaviour through insufficient information accompanying the planning application, whereby uncertainty over the environmental impacts of the proposal prevented the Council from reaching a decision. It is put to me that the failure to determine the proposal within the prescribed period was the fault of the planning applicant, with the subsequent appeal being made to avoid providing the information necessary. It is argued that Mr Preston had thus incurred costs due to the necessity to respond fully and comprehensively to the proposal,

including by instructing solicitors to advise, review, draft and submit detailed representations.

5. I accept that such costs were incurred in the course of engaging in the planning application and subsequent appeal. However, for this application to succeed, it must be shown that this was unnecessary or wasted expense resulting directly from the appellant acting unreasonably.
6. This costs application refers to the types of behaviour provided in the PPG as potentially giving rise to a procedural award against an appellant. Mr Preston considers the appellant had acted unreasonably in providing insufficient or inaccurate information over the proposal. A central part of Mr Preston's representations in relation to the appeal related to the failure to carry out an Environmental Impact Assessment in respect of the development proposal. However, neither the Council, nor subsequently the Planning Inspectorate (on behalf of the Secretary of State) deemed that this was required. For the reasons set out in the appeal decision, I came to the same conclusion. As such, there has been no unreasonable behaviour on the part of the appellant in this regard.
7. The appeal evidence demonstrates to me that, between the quashing of the Council's original decision to approve planning permission and the making of the appeal, the appellant cooperated fully with the Council in providing the additional information sought. There are no grounds to find unreasonable behaviour in information which should have been provided with the planning application only being forthcoming once the appeal had been made. During the course of the appeal, the appellant had then quite reasonably responded to later objections from statutory consultees which had not been made at the planning application stage.
8. The appellant also behaved reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeal process. A substantive award of costs against the appellant would only be justified if the grounds for the appeal had no reasonable prospect of succeeding. However, I have allowed the appeal and so there is no basis for finding any behaviour that may give rise to a substantive award against the appellant in this regard.

Conclusion

9. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, this application for an award of costs is not granted.

Jonathan Price

Inspector