



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 F P McCann Limited for a full award of costs against East Cambridgeshire District Council.
 - The Hearing was in connection with an appeal against the failure of the 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 allowed in the terms set out below.

Reasons

2. The national Planning Practice Guidance (PPG) states that parties in planning appeals normally meet their own expenses, but that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. I am satisfied that the Council behaved reasonably in relation to procedural matters once the appeal was made and that none of the behaviours which may give rise to a costs award listed in paragraph 047 of the PPG are evidenced here.
3. The PPG makes it clear that, whilst costs cannot be claimed for the period during the determination of the planning application, all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in a consideration of whether or not costs should be awarded¹.
4. That the Council's unanimous decision to approve the application and grant planning permission was quashed by the High Court on 23 May 2017 is not of itself indicative of unreasonable behaviour. Moreover, the legal error identified by the court was not the fault of the applicant and neither did it mean that the proposal was necessarily unacceptable due to its environmental impacts. No

¹ PPG paragraph: 033 Reference ID: 16-033-20140306 Revision date: 06 03 2014

reasonable explanation was provided by the Council for delaying re-determination for a period in excess of two years through what were evidently piecemeal requests for additional supporting information on the rather vague basis given of further issues having come to light.

5. Not every planning application is successful. However, this was a case where the application, which related to a site partly allocated in the adopted development plan for the general industrial use sought, had previously met with the unanimous approval of the Council. Furthermore, it was an extension to an existing concrete product manufacturing site, rather than introducing this as a new activity into the area.
6. In light of the above, the Council had clearly not worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application². The information derived from the applicant's Freedom of Information request shows the Council resisting a meeting to discuss its noise evidence, having first consulted with interested parties on this. There is also evidence to indicate the Council then had a degree of influence over the conclusions of the final acoustic report it had commissioned; one that might reasonably have been expected to have been taken as providing independent and objective specialist advice.
7. Based on my findings as set out in the related appeal decision, certain of the behaviours cited in the PPG as possibly giving rise to a substantive award against the Council clearly apply in this case. These include preventing or delaying development which should clearly be permitted with regard to development plan policy and other material considerations, and without either adequate substantiation, objective analysis or reasonable application of where planning grounds might have been capable of being dealt with by conditions.
8. Paragraph 048 of the PPG is particularly relevant to consideration of this matter as this advises when a Council's handling of the planning application prior to the appeal might lead to a costs award. Once the appeal was made, the Council provided its putative reason why permission would not have been granted had it been in a position to determine the application itself. However, in the period leading up to the appeal, there is evidence to indicate that the Council should have provided a more complete explanation behind the reasons for not reaching a decision within the relevant time limit. I have found that there were no substantive reasons to justify the Council delaying the determination. Moreover, better communication with the applicant may well have enabled the appeal to be avoided altogether. The Council's behaviour was clearly unreasonable in these regards, with the PPG clearly supporting an award of costs in the circumstances that prevail.
9. The Council's costs rebuttal refers to PPG paragraph 032, which states that costs unrelated to the appeal are ineligible and awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. It is not for me to set the actual costs incurred. However, the PPG is clear that, for a full award, these amount to the party's whole costs for the statutory appeal process, including the preparation of the appeal statement, supporting documentation and the making of any costs application.

² The Town and Country Planning (Development Management Procedure)(England) (Amendment No 2) Order 2012

Conclusion

10. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 East Cambridgeshire District Council shall pay to F P McCann Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to East Cambridgeshire District 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.

Jonathan Price

Inspector