



Costs Decision

Site visit made on 1 February 2021

by **Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Costs application in relation to Appeal Ref: APP/L3245/W/20/3250229 Land adjacent to Linney House, The Linney, Ludlow, Shropshire

- 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 Linney House Developments Ltd for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for the reprofiling of ground, restoration of stone boundary wall and construction of eight houses.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's alleged unreasonable approach during the processing of the planning application.
3. The main parties submitted their cases in writing and therefore there is no need to repeat them in full. The applicant seeks a full award of costs.
4. Essentially, the applicant claims that they have been proactive in their engagement with the Council over a lengthy period of time. From the very outset they were keen to establish a partnership with the Council whereby all parties could formulate a scheme of excellence in design terms having regard to the sensitivities of the site. Some remedial work was initially necessary to identify flood levels and which required the felling of some 20 trees according to the applicant. This caused a level of discord with specialist officers of the Council, which the applicant believes tainted further positive dialogue. The planning application was subsequently lodged; however, there followed a long period of inactivity despite the applicant commissioning several technical reports in an effort to respond to the concerns expressed by consultees of the Council and its officers. A number of amendments have been presented to the Council and a significant amount of correspondence submitted. In the applicant's view, the Council has prevaricated and failed to determine the application in a timely manner.
5. For the Council, it itemises the steps taken at each stage to seek agreement to an extension of time for determination of the application and only recently

went beyond the agreed timetable because a revised planning application had been submitted for the site and the Council wished to continue further dialogue with the applicant, presumably to ascertain their intentions and to avoid the prospect of appeals. It has moreover, fully explained its position to the applicant in relation to the appeal scheme but wished nevertheless to continue working with them on the later scheme in order to achieve a mutually acceptable outcome. The Council considers this to be particularly pertinent given that there is a potential "fallback" position at this site. The Council refutes the allegation that it has been obsessed about the number of trees that were felled on site and that this has had no bearing on the consideration of the appeal scheme itself.

6. I accept that unnecessary delays on the part of the Council can amount to unreasonable behaviour under the costs regime. Notwithstanding the significant efforts made by the applicant in engaging with the Council throughout the pre-application, application and appeal process, the Council's confirmation of several extension of time agreements with the applicant and who seemingly agreed to such extensions suggests to me that the Council has sought to work with the applicant or at the very least, offered to provide the applicant with the full opportunity to resolve outstanding matters. A letter to the applicant's solicitor dated 21st October 2019 in my view helpfully explains in some detail the remaining outstanding concerns of the Council about the appeal scheme. It included a reasonable offer to meet further with a view to progressing the planning application. However, the applicant appears not to have taken up the offer but instead decided to exercise their rights to lodge an appeal against non-determination.
7. Whilst I sympathise with the applicant about the length of time taken to reach that point, given what I have read and as evidenced in the various communications, consultation responses and explanations given by the Council, I do not consider that this amounted to unreasonable behaviour on the part of the Council. Moreover, both the PPG and the National Planning Policy Framework encourage local planning authorities to take a positive approach and work proactively with applicants. Despite the length of time taken to determine the application, I have little substantive evidence to indicate that the Council was reluctant to engage proactively with the applicant. This is evidenced by the involvement of senior officers of the Council.
8. I find that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

Conclusion

9. The application for a partial award of costs is refused.

Gareth W Thomas

INSPECTOR