The Planning Inspectorate

Costs Decision

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 April 2021

Costs application in relation to Appeal Ref: APP/V3310/X/20/3260607
Maple Cottage, Poplar Farm, Eastertown, Lympsham, Somerset, BS24 0HY

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Paul Brace for a full award of costs against Sedgemoor District 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 a certificate of lawful use or development for an existing use of a building as a permanent dwelling house.

Decision

1. The application for an award of costs 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.

3. It is claimed that the Council failed accurately to describe or understand the application, and created unnecessary delay and cost in addressing unnecessary legal argument on an irrelevant point. The Council persisted in an incorrect interpretation of the application; ignored case law submitted to them; raised irrelevant case law submitted nearly 11 months after submission of the application; and failed to review their case accordingly. The Council were requested to make a decision so an appeal could be made and did not do so in a reasonable timeframe with the last agreed time extension being at the appellant's suggestion on 19 June 2020. It is also claimed that the Council's statement is poorly laid out and in parts incomprehensible.

4. The Council incorrectly amended the description of the application by referring to a breach of condition attached to planning permission 24/01/00003 and has failed to explain why this was done. Although the Council has powers under s191 to modify a description of a proposal where they are satisfied with the lawfulness of an existing use or development, it appears this would not be relevant in this case. Notwithstanding this, I am satisfied that the Council was fully aware of the nature of the application as set out in communications between the parties. Whist the incorrect description may have been an irritation to the appellant, it does not automatically follow that this led to any significant additional costs being incurred.

5. The appellant agreed to extend the period for determination of the application. He could have appealed against non-determination at a much earlier date but chose not to do so. The parties were in communication discussing issues but the Council advises that when it became apparent that agreement was not going to be reached, the appellant sought a determination of the application. However, before this could be finalised an appeal was lodged 11 days later. The Council point out that it would have been unreasonable for them to have refused the application without inviting comment from the appellant on the Council's position. They further advise that the agent was most anxious to understand and challenge the Council's position and to do so but then claim that the inevitable delay is evidence of unreasonableness to the point of costs is patently unreasonable.

6. The appellant considers that the Council should have approved the application at first instance preventing the need for an appeal. It seems that this conclusion has been reached on the basis of the appellant considering that his understanding and interpretation of caselaw being correct and that of the Council being wrong. Whilst the Council have taken considerable time in dealing with the application, it has had to respond to a somewhat unusual issue based on the relevance of a s106 obligation in respect of an LDC. The fact that the Council, having received legal advice, reached different conclusions to the appellant is not an indication of unreasonable behaviour but a reflection of the Council seeking to reach a well-reasoned decision based on their interpretation of the facts and caselaw, which they have done in close co-operation with the appellant. The fact that I have reached a different view on the facts of the case and on the relevance of caselaw to that the Council, does not indicate that the Council has been unreasonable in their approach.

7. The appellant's criticism of the Council's statement is well made as I also find the failure to attach paragraph numbers to be unhelpful. However, there is no requirement for this to be done as it is only a matter of sensible best practice. Despite the absence of paragraph numbers I do not agree that the statement is incomprehensible.

8. A clear presentation of a case is helpful to all parties, including the inspector. Attaching extensive appendices to statements, such as the submission of pages of e-mail exchanges without adequate referencing in the body of the statement, is of limited value.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

P N Jarratt

Inspector