
Costs Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2021

**Costs application in relation to Appeal Ref: APP/H0520/X/20/3263087
21 Cambridge Street, St Neots PE19 1JL**

- 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 D Anderson for a full award of costs against Huntingdonshire 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 (LDC) for a proposed use as a single dwelling house.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for the applicant

2. The applicant is seeking a full award of costs as the Council failed to issue a decision within the time limits and failed to explain why and when they would issue an LDC.

The response by the Council

3. The Council accepts that there were delays in processing the application but the agent was advised of this by email on 29 May 2020 and 24 July 2020. The agent was also advised that the Council were minded to issue an LDC.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process.
5. The application was submitted on 30 March 2020 and was validated the same day, as advised in the Council letter dated 29 April 2020. On 22 May 2020 the Council's Planning Officer sought additional information, which was provided by the applicant on 29 May 2020. The same day the Planning Officer responded to advise "informally, believe I can now support the certificate." An extension of time was required until 26 June 2020 in order to make a decision and this was agreed by the applicant by email dated 2 June 2020. No decision was issued by 26 June 2020 and on 24 July 2020 the Council emailed to apologise, to explain the reason for the delay (consequences of lockdown) but did not

- request an extension of time. On 25 August 2020 the applicant asked for a timetable for the issue of the decision and on 26 August 2020 the Council emailed to apologise, to explain the reason for the delay (staff shortages) and to state that a decision would be issued by 30 September 2020 "sooner if at all possible."
6. This deadline passed and the applicant emailed again on 16 October and 26 October 2020 to find out why. In particular, the later letter set out that unless a decision was issued by 30 October 2020, the applicant would appeal and seek costs. There was no response to these letters and the appeal was then lodged on 12 November 2020.
 7. The Guidance¹ is clear "If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay."
 8. The appeal has been allowed. As of 29 May 2020, the informal advice of the Council was that it would support the issue of a certificate. Whilst it appears the Planning Officer did their best to try and issue a certificate by 26 June 2020, the effects of lockdown and workloads prevented this. There were no further requests by the Council to extend the period for making a decision, no further communications from the Council after 26 August 2020 and, in particular, there was no response to the applicant's 26 October letter.
 9. This left the applicant in a very difficult position as a certificate was required in order to sell the property to enable him to move to more suitable accommodation, given his serious personal circumstances.² The agent could have lodged an appeal when the 26 June 2020 deadline passed but no doubt was reluctant to do so as the Council had indicated they would support the application and an appeal timetable would mean there would not be a decision on the appeal for at least three months or more. This left the applicant not knowing which way to turn in order to obtain a decision on the application, especially as the Council kept setting deadlines it did not meet.
 10. I find this situation amounts to unacceptable and unreasonable behaviour by the Council, notwithstanding the Council's organisational difficulties. In particular, there was a failure to communicate with the applicant after 26 August 2020. In addition to the earlier delay of one month after the initial determination period, there then followed a further four month delay before the appeal was lodged. Whilst the Council has not resisted the grounds of appeal, nevertheless, the applicant has incurred the cost of making an unnecessary appeal, which could have been avoided, in order to obtain a certificate.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

¹ Paragraph 048

² Letter from local councillor dated 29 March 2021

Costs Order

12. 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 Huntingdon District Council shall pay to Mr D Anderson, the full 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
13. The applicant is now invited to submit to Huntingdon District Council, to whom a copy of this decision has been sent to, details of those costs with a view to reaching agreement as to the amount.

D Fleming

INSPECTOR