



Costs Decision

Site visit made on 8 December 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 May 2021

Costs application in relation to Appeal Ref: APP/M0933/W/20/3257476 Land at Saw Pit House, Newland, Ulverston, Cumbria

- 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 Mr Tom Hrynkow for a full award of costs against South Lakeland 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 planning permission for erection of dwelling and agricultural barn.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process¹.
3. The Guidance states that 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 the Inspector's consideration of whether or not costs should be awarded².
4. The applicant submits that the Council acted unreasonably during the determination of the application on the grounds of both substantive and procedural matters.
5. In relation to substantive matters, the applicant asserts that he sought and obtained significant pre-application advice from the Council regarding the proposed development, which was positive in its conclusions. He confirms that, based on this advice, an application was prepared and submitted to the Council, following which a view contrary to that provided previously was taken. Furthermore, the applicant contends that the Council refused to engage further with him regarding alternative locations for the proposed development.
6. The pre-application discussions regarding the erection of a single dwelling and agricultural barn on the appeal site followed on from issues raised by the Council in relation to a separate application. From the submitted evidence, it is

¹ National Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306.

² National Planning Practice Guidance, Paragraph: 033 Reference ID: 16-033-20140306.

apparent that there was extensive dialogue between the parties over a number of months prior to the submission of an application on 29 November 2019.

7. As stated in the National Planning Policy Framework (the Framework), early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties³. It is reasonable for the applicant to expect that, regardless of whether or not a fee is paid, any pre-application advice provided by the Council to be reliable, in order to give as much certainty as possible about what is likely to be acceptable. It is evident from the email correspondence submitted that some of the advice provided by the Council was encouraging in relation to the acceptability of the proposed development and was not in line with its subsequent conclusions.
8. Nevertheless, informal advice provided before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors. Indeed, I note that the Council's correspondence with the applicant was caveated in those terms.
9. It is apparent that from as early as February 2019 the applicant was fully aware that the proposed dwelling would require to be assessed against Policy DM13 of the South Lakeland District Council Local Plan Development Management Policies Development Plan Document, 2019. Furthermore, the need for 'robust justification' in relation to the proposed dwelling against this policy was specifically highlighted by the Council in an email dated 28 October 2019, one month prior to the submission of the application.
10. Whilst the applicant contends that this issue was addressed within his planning statement submitted as part of the application, it is evident that the Council disagreed with the assessment. The Council is required and entitled to apply its planning judgement and, as outlined in my Appeal Decision, I concur with its conclusion on this matter.
11. In relation to the subsequent lack of engagement, given the timing of the application and the escalation of the Covid-19 pandemic, it is understandable that no additional meetings or site visits were arranged to discuss other locations. I also note that potential alternative locations for the proposed development had previously been discussed on site with Council officers and that brief comments on these were provided in an email dated 3 April 2020.
12. Given all of the above, I am unable to conclude that the Council acted unreasonably in relation to substantive matters.
13. In relation to procedural matters, the applicant contends that the Council withheld information, namely the Agricultural Consultant's Report (the AC Report), which prevented him responding to it before lodging the appeal; and, failed to adhere to deadlines in determining the application and follow its own procedure regarding extensions of time.
14. The AC Report was commissioned by the Council and prepared in May 2020. Requests for a copy of the document were made by the applicant at the beginning of June 2020. Following this, the Council supplied extracts of the AC Report with comments in an email dated 19 June 2020. Even though the applicant questioned why he could not see a full copy of the AC Report in July

³ Paragraph 39 The National Planning Policy Framework.

2020, a full copy was not made available to him until early November 2020 when it was submitted by the Council along with the Appeal Statement.

15. I appreciate that as the Council commissioned the AC Report it had discretion as to the release of the information. However, given its pertinence to the assessment and determination of the application, it would have been more proactive and in the spirit of Paragraph 38 of the Framework if a full copy of the document had been provided to the applicant. That said, it seems to me, that the extracts provided permitted the applicant to prepare a response and continue the dialogue with the Council. Therefore, I am of the opinion that, withholding the rest of the information contained within the AC Report was not, of itself, prejudicial to the applicant's case and, consequently, does not constitute unreasonable behaviour by the Council.
16. Furthermore, even if the Council had provided the whole of the AC Report and the issues associated with this element of the proposed development had been resolved, given the issues raised in relation to the lack of compliance of the proposed dwelling with the development plan, it would not have changed the outcome of the application or avoided an appeal with the need to prepare supporting documentation.
17. With regard to the Council's failure to determine the application within the appropriate period, the applicant declares that the application was submitted on 29 November 2019 and that the Council had all the information that it required by late May 2020, but had still not made a decision by the time the appeal was submitted on 10 August 2020.
18. The Guidance states that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation⁴. It is apparent that the application process was lengthened by a combination of the complex nature of the appeal site and wider area; ongoing discussions regarding issues raised by both parties; and the unprecedented circumstances of the Covid-19 pandemic. I have been unable to find a formal 'proper explanation' from the Council in the submitted evidence. Nevertheless, given the circumstances, I am not persuaded that this or the failure to adhere to deadlines in determining the application constitutes unreasonable behaviour on the Council's part.
19. In addition, even if the application had been determined within the statutory period, given the outstanding issues with the proposed development, it is highly likely that it would have been refused and been the subject of an appeal on those grounds.
20. There are inconsistencies and ambiguities within the submissions as to whether or not an extension of time was agreed between the parties. From the evidence provided, I cannot be certain that the Council failed to follow its own procedure or that it did not fulfil its development management responsibilities in this respect. As such, I am unable to conclude that unreasonable behaviour by the Council has been demonstrated.

Conclusion

21. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the

⁴ National Planning Practice Guidance, Paragraph: 048 Reference ID: 16-048-20140306.

Guidance, has not been demonstrated, and thus a full award of costs is refused.

F Cullen

INSPECTOR