



Costs Decision

Site visit made on 24 May 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Costs application in relation to Appeal Ref: APP/P1133/W/21/3268298 Dolphin Inn, Fore Street, Kenton EX6 8LD

- 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 Dare Utility Services Ltd for a full award of costs against Teignbridge 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 to demolish extensions, convert main building into two dwellings and construct a new public house.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant seeks a full award of costs, in summary, because of the changing position of the Local Planning Authority (LPA) during the consideration of the application, its moving to a position of objection and the delays, subsequent lack of activity and unwillingness to determine the application. The case is made that the lack of communication led to no option but to appeal against non-determination and this has led to delays and costs involved in making the appeal.
4. The LPA has set out its understanding of the process, includes correspondence during the consideration of the application and explains the staff and Covid-19 related issues that hampered it making a final decision.
5. The Guidance explains that costs can only be awarded in relation to unnecessary and wasted expense at the appeal, although the 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 awarded.
6. Furthermore, the Guidance indicates that the Planning Inspectorate will take into account all evidence, alongside any extenuating circumstances, in deciding whether an award of costs is justified. The staffing difficulties of the LPA are largely matters for itself to resolve and to ensure that a satisfactory service is provided. However, the impacts of the Covid-19 pandemic have been

extraordinary and have affected many processes and is clearly background information that has some relevance.

7. Looking at the papers, after the application was submitted there was some months of discussions and negotiations between the LPA and the applicant. This took some time and there was some inconsistency in the advice of the LPA during this period. However, as the background information became available, and following internal discussions, the advice of the LPA became clearer and was set out in correspondence to the applicant.
8. In particular, the e-mail of 20 October 2020 to the then agent, explained the concerns and the information that was considered to be needed to address such matters as flood risk, noise and disturbance, parking and impact on heritage assets. Revised plans were discussed to seek to address design and appearance matters. This also led to a response from the applicant himself and some additional correspondence between the local councillor and case officer which it appears continued until towards the end of November 2020.
9. The LPA clearly took some time to come to its final conclusions on the concerns with the proposal. However, communication took place during this period and at the end of that stage the LPA's concerns were before the applicant to address as considered necessary. I do not consider that the actions of the LPA during this period amount to unreasonable behaviour, and did not cause unnecessary or wasted expense at the appeal.
10. At the end of that period, it seems to me that the applicant knew the issues at dispute. The Council indicated, in the final correspondence, it would determine the application after 30 November 2020 if it was not withdrawn or if no confirmation was received that the additional information to address various issues would be forthcoming. I am not aware of any correspondence from either main party after that time. Having regard to the normal course of events the LPA should then have proceeded to determine the application and this would have been likely during December 2020 or the next available committee meeting, if required.
11. When the LPA did not determine the application in accordance with its timetable, the applicant appealed on the basis of non-determination on 4 February 2021. There was no indication when the LPA would have reached a decision and the communication at this stage from the LPA was poor. However, given all the circumstances this latter period of delay, before the applicant sought a decision from the Planning Inspectorate, was not so long, having regard to the background of the pandemic, to amount to unreasonable behaviour. The evidence indicates that the LPA would have refused the application in any case and the appeal could not have been avoided.
12. At the appeal stage, the LPA set out its objections to the scheme which were very similar to the concerns raised in the e-mail of 20 October 2020. Consequently, there was no material additional costs in seeking to address these planning issues at the appeal stage than supplying information to address outstanding technical matters with the LPA at the application stage. It will be seen from my decision, that with the exception of the parking issue, I agree with the LPA on these matters and therefore, despite what appears some inconsistency in earlier advice, the concerns raised by the LPA were legitimate and well made.

13. Drawing all these matters together, while there were delays during the processing of the application by the LPA, when it came to a final view on the proposal, the LPA gave the applicant an opportunity to address the outstanding issues. Further reports and technical evidence were not submitted in a substantive form to the LPA and while the lack of decision and delay of the LPA was regrettable, the applicant exercised the right of appeal on grounds of non-determination to progress the proposal. The appeal was not avoidable as similar and legitimate planning issues were required to be addressed at the appeal stage as had been raised by the LPA in earlier correspondence.
14. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably and the appeal could not have been avoided. Accordingly, the applicant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR