The Planning Inspectorate

Costs Decision

Site visit made on 28 April 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2021

Costs application in relation to Appeal Ref: APP/T0355/W/20/3248271 Hythe End Farm, Hythe End Road, Wraysbury, Staines-Upon-Thames TW19 5AW

- 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 Fowles Crushed Concrete Limited for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
- The appeal was against the grant subject to a condition of planning permission for detached building for the maintenance of plant and machinery associated with the storage before and after processing and processing of waste materials which is the subject of a Certificate of Lawful Use dated 9 September 1998 (retrospective).

Decision

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

Reasons

2. The claim for an award of costs relates to alleged unreasonable behaviour by the Council during the processing of the planning application, in a lack of dialogue after the decision had been taken to grant permission with the disputed condition and in the subsequent appeal process.

3. On face value, it would appear unreasonable for the Council to have taken 38 months to determine the planning application. But as the planning application was retrospective, the applicant would have had the benefit of the use of the building during this time. However, the Council at the date of its decision should have been conscious of the possibility that the building could have become immune from enforcement action through the passage of time. The application form declared the date the building was constructed, and it would appear that information in the Council's records would have corroborated this.

4. It would not have been possible for the applicant to formally seek a certificate of lawful development for the building until just a few weeks before the Council took its decision when 4 years had passed, and there was no obligation on the applicant to do so, particularly when there was a live planning application for the building's retention. Notwithstanding prompts from the applicant's agents prior to the meeting of the Council's Development Management Panel, the Council did not appear to be alert to the implications of the passage of time for any conditions to be imposed. Furthermore, the opportunity to make amendments to the disputed condition prior to submission of the appeal was not taken.

5. Yet Planning Practice Guidance (PPG) advises that "*Parties in planning appeals and other planning proceedings normally meet their own expenses*".[1] Furthermore, that costs may be awarded where "*a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process*".[2] Most of the claim relates to unreasonable behaviour in the application process. PPG states "*actions at the time of the planning application can be taken into account*" but that "*costs can only be awarded in relation to unnecessary or wasted expense at the appeal*".[3]

6. The appeal was originally due to be considered at an Appeal Hearing, but the Council in negotiation with the applicant agreed to present to the Planning Inspectorate a replacement planning condition. This was on the agreed following understanding: "*If the Inspector approves the substitution of the new condition detailed in paragraph 2 above, for the existing condition 1 to planning permission 16/02366/FULL then this appeal be disposed of on that basis without the need for a hearing and, in that event, the appellant will withdraw its application for costs*". The appeal has proceeded on an examination of written representations but the applicant has reinstated the application for costs in response to the Council's appeal statement which, it is contended "*at least in the alternative, seeks to uphold the original condition"* and "*has thereby repudiated the agreement which the main parties reached*".

7. It will be evident from the main decision that I have considered the agreed replacement condition still to be unduly restrictive for the applicant, but that it nonetheless forms the basis for the condition I have substituted for the disputed condition. The replacement condition provides clarification on the inclusion of the servicing and maintenance of vehicles as well as plant and machinery within the building, provision of a more accurate description of the lawful use of the site as a waste processing facility and deletion of the requirement for the building to be removed when no longer required for the stated purposes. The replacement condition, provisionally agreed by the parties in February this year, demonstrates a significant degree of dialogue and cooperation in seeking to resolve the outstanding issues regarding the disputed planning condition. This would have reduced the expense for all parties in attending a Hearing without preparation of the replacement condition.

8. Whilst the applicant has been put to the trouble of submitting an appeal to challenge the disputed condition, and there was a considerable delay in determining the planning application, the Council's behaviour in the appeal process has not been so unreasonable as to warrant an award of costs.

Conclusion

9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in Planning Practice Guidance, has not been demonstrated. The application should not succeed.

Rory MacLeod

INSPECTOR

[1] PPG Paragraph: 028 Reference ID: 16-028-20140306
[2] PPG Paragraph: 030 Reference ID: 16-030-20140306
[3] PPG Paragraph: 033 Reference ID: 16-033-20140306