



Costs Decision

Site visit made on 6 July 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Costs application in relation to Appeal Ref: APP/R0660/W/21/3268801 Land adjacent to Allwinds, Knutsford Road, Knolls Green, Mobberley WA16 7BN

- 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 Bagley for a full award of costs against Cheshire East 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 the cladding of an existing open barn.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant's concerns relate to the significant delay in the Council's consideration of the planning application and approach of the Council in relation to the use of the building.
4. The PPG states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant time period. It goes on to highlight that if an appeal is allowed in such circumstances, costs may be awarded against the local planning authority if it is considered that there were no substantive reasons to justify delaying the determination and if better communication with the applicant would have enabled the appeal to be avoided altogether.
5. The evidence of correspondence between the main parties indicates the Council's difficulties in meeting statutory targets as a consequence of the effects of the Covid-19 pandemic on working practices. The Council stated it had a backlog of cases which it was attempting to clear in chronological order. It is also apparent that a degree of communication took place between the

Council's officer and the applicant's agent. Although, on occasion, this required repeat requests, the level of response did not seem unreasonable under the circumstances.

6. However, it was the Council's position that the initial proposal sought a change of use of the building. As a building described as an existing storage building, there was no change of use within the description of the proposed development. Nevertheless, following the expressed concerns of the Council, reference to any use of the building was conceded for the purpose of the planning application. The applicant subsequently amended the description in agreement with the Council. Accordingly, the description of development was explicitly defined and limited in scope to the operational development of cladding the existing building. There was no explicit or implied reference to its use.
7. Despite this, the Council has persisted in introducing the matter of the use of the building. This lay outside the scope of the development applied for.
8. I acknowledge that there may be some dispute with regard to the lawful use of the building following the description initially used on Part 6 of the application form and confirmation that the site was vacant. It may legitimately be the applicant's understanding that the last use of the site was a storage use, but it does not give it lawful status. I also note the agricultural use described in the planning history as recently as 2017.
9. Regardless, it was the appellant's prerogative to include or exclude any aspect of proposed development within the terms of the planning application. Subsequently, if there were concerns that a change of use of the building had occurred, it was open to the Council to investigate through alternative provisions of the Town and Country Planning Act 1990 and, if expedient, to pursue regularisation of, or action against, any unauthorised development as a separate consideration. It was not open to the Council to impose such matters on the application for planning permission sought.
10. Furthermore, the Council has persisted with its approach through the appeal proceedings. Even if it is the Council's position that the use is determinative, there is little before me, aside from the superseded description, to demonstrate that there are any substantive grounds for concluding that a material change of use of the building has occurred or that it would lead to conflict with the provisions of the development plan. The basis for objecting on the grounds of effects on the living conditions of nearby residents is unsubstantiated by the Council. It is therefore a generalised assertion unsupported by any objective analysis. In the absence of clear supporting evidence, I find the imposition of matters outside the scope of the application was flawed.
11. Accordingly, despite the applicant's 'fair warning', the delays caused to a proposal for operational development by matters outside of its scope, has not been justified. As I have found, the described development is in accordance with the development plan and the National Planning Policy Framework. It should therefore have been approved without delay. The Council has subsequently failed to provide substantive evidence to support the grounds on which it relies in the appeal. I find that this amounts to unreasonable behaviour that has resulted in the applicant's unnecessary expense in the appeal.
12. For the above reasons, a full award of costs is justified.

Costs Order

13. 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 Cheshire East Council shall pay to Mr Tom Bagley the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Hitchcock

INSPECTOR