



Costs Decision

Site visit made on 19 May 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Costs application in relation to Appeal Ref: APP/P1133/W/21/3267189 Stancott Farm, Chudleigh TQ13 0DN

- 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 Amanda Sutherland of the Stancott Partnership 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 for the erection of five residential dwellings to replace existing agricultural barns and workshop while retaining workshop office for bat roost.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to directly incur unnecessary expense in the appeal process.
3. The applicant asserts that the Council acted unreasonably in delaying the application, beginning at validation. The Council has acted unreasonably and inconsistently regarding ecology issues and in several other respects, particularly in terms of the fallback positions at the site. Moreover, the Council acted unreasonably in submitting a hypothetical AA during the appeal despite not providing a draft form of that document to the applicant before the appeal.
4. Whilst it is prudent for the issue of HRA to be considered as soon as possible, to insist upon a completed agreement or undertaking prior to validation is not reasonable in my view, not least because of the likelihood for the terms of any agreement to change, and thus necessitate further legal expense. However, other options were also presented to the applicant in the letter giving notice of the non-validation of the application, so it is not the case that an agreement or undertaking was deemed the essential and only route to achieve validation.
5. The Council were able to refuse the application in time, or just out of time, in May 2020. That the Council did not can only be described as reasonable. Indeed, it led to a specific issue, that of the structural capacity of the barns for hypothetical conversion under Class Q of the GPDO, to be resolved.
6. My reading of the Council's response to the applicant in July 2020 is not that the principle of the proposed development was accepted. Rather, it appears that the Council accepted that PD under the GPDO presents a potential fallback

position, but that the level of genuineness of that fallback position is, in part, subject to the outcome of an HRA.

7. The Council has previously carried out favourable AAs on adjacent land and other sites further afield and has relied on conditions to resolve ecological matters in certain incidences. However, matters of ecology are commonly inherently dependent on prevailing, site specific circumstances, and especially so where they relate to European Sites such as the SAC, and particularly in this case given that the applicant's own surveys recorded greater horseshoe bat within the appeal site. As such, I do not consider that the Council's conduct at the appeal site regarding ecology can be defined as unreasonable because of any alleged inconsistency with its approach to ecological matters elsewhere.
8. The Council's approach to matters more typical to Class Q submissions may be considered inconsistent compared to other sites and has been accepted as so by the Council in previous correspondence. However, this issue ran a distant second to the ecological matters in contributing to the delay.
9. By August 2020 the applicant had responded to requests for further detail about the onsite EPS. However, this did not necessitate amendments to the description of development and the readvertisement of the application in my view. This caused delay and logically a degree of confusion, as did the apparent inefficiency in the handover of the case file when officers left the Council.
10. The Council authored a draft AA, but it was not disclosed to the applicant in August 2020. It should have been disclosed as this would have been helpful. Yet, it appears that it became quickly superseded by the evolution of the scheme. This is also a rational reason, to a point, why the Council held off any subsequent AA. That said, by November the discussion between the parties had come to relate to issues of fine detail that could have been resolved by conditions and did not warrant further delay to the undertaking of the any AA.
11. On the other hand, the pandemic would have had some influence in the delay, as the Council would have suffered unforeseen staff shortages and did not have a culture of home working. It is evident that confusion in the way documents were presented also impacted the speed of the Council's assessment. Emails between the applicant and the Council also demonstrate that elements of the proposed layout and that of the hypothetical Class Q submission remained unresolved by October, as were other issues, such as those pertaining to the AH and drainage.
12. In any event, it is not established how the Council's actions, unreasonable or otherwise, have caused the applicant to directly incur unnecessary expense in the appeal process itself. It is logical that, if the final case officer had been given adequate time to make their assessment, the planning application would have been recommended for refusal. I note that the same officer has set out the Council's case during the appeal. I have ultimately agreed with the concerns that have been raised, particularly regarding the usefulness of considering an HRA within the context of a hypothetical Class Q submission.
13. In terms of the Council's submission of the shadow AA during the appeal, I do not consider this to be unreasonable as it may well have become evidence pertinent to my undertaking of an AA as the competent authority, had the circumstances where permission were to be granted arisen as a prospect.

14. Consequently, I accept that the Council's conduct has not been fully explained and that it has evidently contributed to the delay which led to its failure to determine the planning application. However, this was not the only factor in the delay, and ultimately, as I have not allowed the appeal, it did not delay development that should clearly have been permitted. Whilst I can understand the applicant's frustrations by January 2021, I have no reason to doubt that the Council, given more time, would have refused to grant planning permission for the reasons that the very same officer articulated during the appeal.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. An award of costs is not justified.

Matthew Jones

INSPECTOR