



Costs Decision

Site visit made on 29 June 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Costs application in relation to Appeal Ref: APP/G2815/W/21/3269821 Land to the rear of The Wheatsheaf Public House, 1 High Street South, Rushden NN10 0QU

- 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 Barker of Barker Homes Wheatsheaf Ltd for a full award of costs against East Northants 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 erection of 4 two storey two bed houses, associated parking and amenity space.
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Decision

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

Reasons

2. The Planning Practice Guidance (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 incur unnecessary expense in the appeal process.
3. The PPG sets out that if the local planning authority fails to determine an application within the time limits, it should give the applicant a proper explanation. 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 period. It advises that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs.
4. The PPG also makes it clear that a local planning authority is at risk of an award of costs on substantive grounds if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The applicant has applied for costs on the basis that the delays in handling the planning application amounted to unreasonable behaviour and led to the applicant having no choice but to incur the cost of an appeal for failure to determine the application. The applicant also contends that the Council has not provided evidence to justify its reasons for refusal.

6. The planning application was submitted and validated on 11 November 2020. The statutory deadline for a decision on the application was 6 January 2021. A decision was not made and the appeal was submitted on 26 February 2021.
7. The Council explained that the failure to determine the application within the relevant time scale was due to concerns with the application regarding character and appearance, heritage assets, trees and highway safety. The delay was to provide time to allow the applicant to attempt to satisfy these concerns. There was also some delay due to holiday periods and staff absence.
8. The submitted chronology of events indicates that during the processing of the application there was various correspondence between the applicant and the Council which included requests for information and for the applicant's agreement for extensions of time. There is some evidence that there were some delays within the process in terms of consultation and responding to the applicant. However, there is also evidence that detailed discussion was ongoing in relation to highway matters, which was the Council's main concern with the proposal.
9. It seems to me that it was not unreasonable for the Council to allow the appellant to provide additional information on highway matters and to wait until it had the local highway authority response before determining the application. Whilst these ongoing discussions resulted in the statutory deadline being missed, I do not find the Council has behaved unreasonably.
10. In view of the range of issues raised I find that it was reasonable for the Council to seek more than two days for reporting and final sign off following receipt of the local highway authority's final comments. However, the applicant did not accept this and chose to appeal. In any event, I am satisfied that even had the application been determined within the statutory time scale, the Council would have reached the same conclusion and appeal would not have been avoided.
11. The Council indicated that, had it been in a position to do so, it would have refused the application for four reasons. These related to character and appearance and the effect on heritage assets; highway safety; contributions to affordable housing and local infrastructure; and the effect of the proposed development on protected habitats sites.
12. The Council's submitted statement of case sets out detailed justification for each of these reasons for refusal. The Council's statement of case does not indicate that any consultation responses were received from either the Council's conservation or tree officers, although there is email correspondence which indicates that the tree officer raised no objection. In the absence of these consultation responses, it was reasonable for the Council to rely on an officer view on these matters.
13. The Council concluded that the proposed buildings would have little impact upon the designated heritage asset. This accords with the findings of the applicant's heritage assessment.
14. The Council sets out its reasons why it considered the loss of trees to be harmful. This is a matter of planning judgement. Whilst I have not agreed with the Council on this point, I am satisfied that the Council has explained its reasons for reaching the conclusions it did.

15. The local highway authority provided detailed reasons as to why it considered the scheme would not be acceptable. I have agreed with the Council's conclusions on these matters which includes the extent to which the TRICS data can be relied on to justify the number of trips associated with the existing use. It follows therefore that I do not find the Council has failed to substantiate its reason for refusal in this respect.
16. With regards to whether the proposed development would trigger the requirement for affordable housing, I have also found that the two schemes are not standalone applications and together would form a single development which would include ten residential units. I have found the Council's approach and its requirement for the proposed development to accord with that set out within the National Planning Policy Framework is justified.
17. The applicant contends that matters relating to mitigation against adverse effects of the proposed development on protected habitats sites could have been addressed early on during the application process. It seems to me that the applicant would have been aware of this requirement having recently obtained planning permission for the conversion of the public house where a similar payment was made during the application process. It was open to the applicant to make the full payment during the application process for the appeal scheme in order to overcome this reason for refusal by the Council. Accordingly, I do not find the Council has behaved unreasonably in regard to this matter.
18. I am satisfied that the Council has substantiated each of its reasons for refusal and provided objective analysis of the proposal's impact. I am also satisfied that the Council did not unreasonably delay its handling of the planning application. I am therefore satisfied that the Council acted reasonably during the application process and in its subsequent assessment as to why the scheme would not be acceptable. Consequently, I find that the applicant has not incurred unnecessary or wasted expense in the appeal process as a result of the Council's actions.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Rachael Pipkin

INSPECTOR