
Costs Decisions

Hearing Held on 22 and 23 June 2021

Site visit made on 25 June 2021

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Costs application in relation to Appeal Ref: APP/P3040/W/20/3251801 Costock Road, East Leake LE12 6HY

- 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 Martin Valentine (Positive Homes Ltd) for a full award of costs against Rushcliffe Borough Council.
 - The hearing was in connection with an appeal 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 22 residential units and a 3.5m high ball strike net to the eastern site boundary.
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Decision

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

The submissions for Mr Martin Valentine (Positive Homes Ltd)

2. The applicant considers that the Council has prevented development that should clearly have been approved when having regard to the development plan, the objectives of the National Planning Policy Framework and other material considerations. The Council has failed to properly consider the benefits of the proposal against an absence of identified harm and not carried out a proper assessment of the overall planning balance. There has been no consistency in decision making and a failure to take account of recent appeal decisions for other nearby sites in East Leake.
3. The Council has failed to communicate effectively, and while the applicant has attempted to resolve all outstanding issues the Council has failed to respond to queries in a timely manner, failed to effectively express its policy interpretation until months after the statutory period for determination of the planning application and provided no justifiable reason for extending the statutory determination period.
4. The Council encouraged the applicant to resolve technical matters during the course of the planning application without committing to a positive interpretation of policy. The Council refused to make a decision in the absence of a signed agreed extension of time. This is the wrong approach. The Planning Practice Guidance (PPG) states that if an appeal is allowed the local planning authority may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled to appeal to be

avoided altogether¹. This has resulted in the applicant having to seek expert advice to address the issues raised and make the appeal.

The response by Rushcliffe Borough Council

5. Much of the appellant's case relates to matters of concern regarding the processing and determination of the planning application which are not covered by the costs regime
6. The Council's Statement of Case addresses why the development should be resisted and takes into account the benefits of the proposal and other decisions regarding residential development in the area.

Reasons

7. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
8. The planning application the subject of the appeal is dated 30 July 2019 and was validated on 20 September 2019. After a number of agreed extensions of time for the Council to make a determination, the appeal against non-determination was submitted on 1 May 2020.
9. I am in receipt of a detailed timeline of information relating to ongoing correspondence between the applicant and the Council during which the applicant expresses his increasing concern about the way the planning application is being assessed and the dissatisfaction with how the Council failed to respond to communication.
10. However, the PPG is clear that usually costs cannot be claimed for the period during the determination of the planning application. Although it goes on to say that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, 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 awarded².
11. The Council's Statement of Case contains a full assessment of the policy context for this appeal, together with reference to relevant appeal decisions and explanation as to how they were considered under a different policy background to the case before me now. Furthermore, the benefits of the development and the appropriate planning balance is dealt with at paragraphs 7.3-7.5 of its Statement of Case.
12. While there is a difference of opinion as to the relevant Policies which should be applied to this development given its location at the edge of the settlement, I have concurred with the Council in my decision. It is not the case therefore that the Council has prevented development that clearly should have been approved. In addition, from the information provided by the applicant the Council was clear at all times in its correspondence, particularly that dated 20 December 2019, 31 January 2020, 14 and 15 April 2020, during its assessment of the planning application that while the applicant could seek to resolve technical issues to reduce costs and time in any appeal proceedings, there was an outstanding Policy objection to the proposal which was unlikely to be

¹ Paragraph: 048 Reference ID: 16-048-20140306

² Paragraph: 033 Reference ID: 16-033-20140306

resolved. In this matter therefore the Council has not been unreasonable, instead there appears to have been a fundamental disagreement between the two parties which could only be resolved through the appeal procedure.

13. The PPG does allow for an award of costs where the Council has failed to determine the application in an appropriate timescale, but this is only where the associated appeal is allowed. That is not the case here.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR