



Costs Decision

Site visit made on 28 July 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2021

Costs application in relation to Appeal Ref: APP/C1625/W/20/3262568 Land Opposite New Inn, Waterley Bottom, North Nibley, Gloucestershire GL11 6ED

- 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 Mrs Katie Howse for a full award of costs against Stroud 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 approval required under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for an agricultural barn.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) a lack of cooperation with the appellant, (ii) providing information that is shown to be manifestly inaccurate or untrue, (iii) failure to produce evidence to substantiate its purported refusal reasons (iv) making vague or generalised, or inaccurate assertions about the proposal's impact, (v) acting contrary to established caselaw, (vi) not determining similar cases in a consistent manner, and (vii) not reviewing its case promptly following the lodging of the appeal.
3. The complaints in respect of a lack of cooperation rely on claims that the Council has acted in a way it is prohibited from doing and refusing to accept this accusation. However, I am persuaded from the evidence that the Council considers it has acted lawfully and so I am unconvinced it has been deliberately uncooperative by failing to accept the appellant's accusations.
4. Concerns are raised that the Council has provided inaccurate information in stating that the development could not be dealt with under the prior approval procedure. The Council's initial view that the application was invalid was addressed by an acknowledgement to the agent's email stating excavation works were unconnected with the appeal scheme. While the Council's email dated 15 May 2021 confirms no determination had been made within the 28 day period, there is no indication that this was because the Council considered the application to be invalid.

5. Also, it is claimed that the Council has been inaccurate in stating that the appeal scheme had already commenced at the time of the application. However, given the circumstances of this case, I am not required to determine whether the scheme complies with the conditions and limitations of Part 6 of Schedule 2 of the GPDO (Part 6). As such, I am unable to conclude that the Council's views are incorrect.
6. The appellant states the 15 May 2021 email represents a determination on the application. However, I have arrived at the view that no decision was made within the 28 day period on whether prior approval was required. Therefore, the Council's position in this regard is not manifestly inaccurate.
7. As I have found the Council has not made a formal determination in response to the application, there are no formal refusal reasons. Also, the Council does not contend the appeal should be dismissed. Therefore, it is understandable that the Council provides no evidence to support its refusal reasons.
8. Also, the Council has made no assertions about the impacts of the proposal. The comments raised as to why it considers the scheme fails to meet the conditions of permitted development rights are specific and, in any case, they do not constitute the determination as to whether prior approval is required. There is no evidence of vague or generalised comments about the development.
9. The applicant has highlighted caselaw where prior approval applications under the provisions of Part 6 have been considered. The claim is made that the Council's determination is contrary to judgements which explain the limitations of the issues to be considered with such applications. However, this criticism assumes the Council has issued a decision in response to the application. For the reasons as set out in my appeal decision, I have found that the Council has provided an opinion rather than a formal determination and so I am unconvinced it has acted contrary to established caselaw.
10. Limited information has been provided on the other referred to recent prior approval decision issued by the Council so I am unable to draw accurate comparisons with this appeal. Therefore, I am unable to conclude it has acted inconsistently with similar cases.
11. As I have found the Council has not acted unreasonably on any of the above grounds, there is no justification for it to have reviewed its case once the appeal was lodged. It has clearly explained its stance that no determination has been issued in response to the application and the evidence indicates that this was clearly understood by the applicant. In the spirit of helpfulness, the Council has gone on to provide a view that the proposal would not be permitted development but in any event the applicant has proceeded to construct the scheme. In such circumstances, I am not persuaded the applicant was forced into lodging an appeal as claimed.
12. For these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. Therefore, an award of costs is not justified.

Jonathan Edwards

INSPECTOR