



Costs Decision

Site visit made on 8 December 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Costs application in relation to Appeal Ref: APP/M0933/W/20/3256717 Sainsbury's Supermarket Ltd, Mint Bridge, Shap Road, Kendal LA9 6DL

- 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 Sainsbury's Supermarkets Ltd for a full award of costs against South Lakeland 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 development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, 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 process¹.
3. The application for a full award of costs is on the basis that South Lakeland District Council (SLDC) failed to determine the application within a reasonable time period, which resulted in the submission of the appeal being the only way by which a decision would be achieved. The applicant contends that, had SLDC corresponded meaningfully with the applicant during the period between mid-March and late-July 2020, the appeal would have been avoided along with the costs associated with its preparation.
4. The Guidance states that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, 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.
5. The Guidance goes on to advise that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay. Where this leads to an appeal against non-determination, they should also explain why permission

¹ National Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306.

² National Planning Practice Guidance, Paragraph: 033 Reference ID: 16-033-20140306.

- would not have been granted had the application been determined within the relevant period³.
6. The application, dated 13 November 2019, was received by SLDC on 2 December 2019 and validated on the same day⁴. The target determination date was 27 January 2020. The appeal was submitted six months later on 27 July 2020.
 7. The determination of the application was initially extended until around March 2020 in order to confirm the acceptability of the proposed variation of condition 22 in principle and agree its rewording. SLDC prepared a draft report / decision incorporating a revised condition 22 in late February / early March 2020.
 8. However, the determination of the application was lengthened further by the need for SLDC to consult its legal team. This was to confirm whether a further section 106 planning obligation (s106) or deed of variation was required to be submitted with the application or that, as asserted by the applicant, the subsisting obligations could be addressed by appropriately worded conditions as part of any new permission. At that time, this was considered a reasonable course of action by the applicant.
 9. The Guidance does not confirm what constitutes a 'proper explanation' from a local planning authority for any delay in the determination of an application. However, the submitted evidence contains no formal letter or correspondence from SLDC to the applicant in this regard. In addition, even though some allowances can be made for SLDC's limited communication with the applicant in the period after March 2020 due to the unprecedented circumstances of the Covid-19 pandemic, the determination of the application fell significantly short of nationally prescribed expectations.
 10. Nevertheless, SLDC operates within a two-tier authority. Pertinent to the application, Cumbria County Council (the County Council) is one of the signatories to the original s106 under application ref: SL/2013/1120 and to the deed of variation of the s106 under application ref: SL/2018/0456.
 11. The applicant was aware that the contested matter had been passed to SLDC's legal team and subsequently to the County Council for comment. The speed of any reply was not something that SLDC had direct control over. The submitted email correspondence confirms that reminder emails requesting a reply were repeatedly sent by the planning officer to the legal team and that an external solicitor was commissioned in July in an attempt to advance the matter.
 12. I note the applicant's offer of a short extension of time for SLDC to determine the application prior to the submission of the appeal. However, given the above, it is reasonable that SLDC would not want to progress the determination of the application until it had received a formal response, including legal advice, from the County Council on the matters which were at issue.
 13. Moreover, given that application ref: SL/2018/0456 included a deed of variation of the s106, it was not illogical for SLDC to have expected a further s106 or deed of variation to be necessary and submitted as part of the application.

³ National Planning Practice Guidance, Paragraph: 048 Reference ID: 16-048-20140306.

⁴ Application Ref: SL/2019/0969.

14. I acknowledge the applicant's desire to seek a resolution to the determination of the application and it would have been more in the spirit of paragraph 38 of the National Planning Policy Framework if SLDC had proactively communicated with the applicant between mid-March and late-July 2020 on the application's progress.
15. However, taking the above into account, I conclude that the Council had valid reasons for failing to determine the application within the statutory time period. Indeed, during the course of the appeal a response from a legal advisor on behalf of the County Council was received which corroborated SLDC's original stance. Therefore, even if the legal team had responded sooner, it would not necessarily have avoided an appeal.
16. Additionally, given SLDC's leniency in relation to the relaxation of the existing delivery hours from February 2020, I am not convinced that the failure to issue a decision put the applicant in an unacceptable position in relation to its commercial operation.
17. Whilst I have come to a different conclusion to SLDC in my Appeal Decision as to whether a further s106 or deed of variation is necessary, I find that the actions of SLDC in the period during the determination of the application and prior to the submission of the appeal do not amount to unreasonable behaviour.
18. During the appeal process SLDC provided a timely and adequate explanation as to why the application had not been determined and, by inference, why permission would not have been granted had the application been determined within the relevant period. I am therefore satisfied that SLDC cooperated fully and in a timely manner throughout the appeal process.

Conclusion

19. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Guidance, has not been demonstrated, and thus a full award of costs is refused.

F Cullen

INSPECTOR