



Costs Decision

Site visit made on 22 June 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 7 October 2021

Costs application in relation to Appeal Ref: APP/W1715/W/20/3254715 Land at Oak Cottage, Winchester Road, Boorley Green

- 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 Eastleigh Borough Council for a full award of costs against Foreman Homes Ltd.
 - 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 residential development of 31 No dwellings, associated landscaping, amenity areas and a means of access from Winchester Road following demolition of 1 No dwelling and associated outbuildings.
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council's application is based on the premise that it had been undertaking negotiations with the appellant, and it was continuing in that regard. It had agreed extensions in the time to determine the application with the then applicant. It is the Council's view that it was unreasonable to lodge an appeal when negotiations were continuing, and this led to unnecessary expenditure in responding to the appeal.
4. I consider that the Council's position is misconceived. Once an applicant has submitted an application it is the responsibility of the local planning authority to determine that application. It may be that the parties agree an extension to the statutory period, but an applicant is under no obligation whatsoever to agree to that or to it being further extended.
5. In this case the parties had agreed to a number of extensions, but once the last of those had expired the applicant was within its rights to lodge the appeal. That it chose to effectively extend negotiations by submitting a second application and lodging an appeal on the earlier scheme is entirely a matter for the applicant.
6. While I have concluded that the proposal at the point at which the appeal was lodged is unacceptable, the lodging of the appeal was a reasonable action, and

the Council was obligated to respond to that. Any expense in that regard was not unnecessary.

7. The Council also considers submitting the Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) at the point that it did was unreasonable; it considers the obligation should have been submitted when the appeal was lodged.
8. Annex N to the Planning Inspectorate's 'Procedural Guide: Planning appeals – England' indicates that for appeals of this type, such obligations should be with the Inspectorate within 7 weeks of the start date. Due to matters beyond the control of the appellant only a draft was submitted by this date and it was agreed by the Inspectorate that the final, completed, obligation could be submitted at a later date. The actions of the appellant therefore did not represent unreasonable behaviour.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

RJ Jackson

INSPECTOR