
Costs Decision

Site visit made on 13 September 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Costs application in relation to Appeal Ref: APP/C2708/W/20/3265528 Land at Ling Haw Hill, Cononley Road, Glusburn, North Yorkshire

- 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 and Mrs B H Green for a full award of costs against Craven District Council.
 - The appeal was against the failure to determine an application for consent, agreement or approval of details required by conditions of a planning permission relating to appearance and landscaping.
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Decision

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

The submission by Mr and Mrs B H Green

2. Mr and Mrs B H Green advance that Craven District Council failed to determine the planning application within the agreed timescale, did not advise council members that the officer report related to an appeal against the failure to issue a decision and that the Council subsequently failed to adhere to the appeal deadlines.
3. Mr and Mrs Green also consider that the matter of scale of the proposed dwellings, including building heights has been approved previously. They claim that the Council has failed to substantiate their concerns about the appearance of plot Nos 4-6, having only provided vague, generalised, inaccurate assertions. Mr and Mrs Green advise that the Council did not advise them of the relevant committee date and that the committee report contains factually incorrect and libellous statements which were pointed out, but not corrected. They state that the recorded resolution of the Council makes no reference to the appeal process. They advance that the Council's actions have unnecessarily delayed development and caused them to incur unnecessary costs in making the appeal.
4. Furthermore, Mr and Mrs Green state that the Council did not correspond with either them or the Inspector to explain their inability to meet the appeal deadlines set. They advise that they have incurred additional expense in the preparation of responses to the Council's late submissions, including the rebuttal of false statements.

The response by Craven District Council

5. Craven District Council does not consider that it has acted unreasonably. The Council claims that the potential for agreeing an extension of time was discussed with the applicant. The Council maintains that the matter of building heights had not previously been approved at the outline stage. The also draw attention to the fact that the officer report made reference to the appeal which had been submitted.
6. The Council considers that the applicants' approach was to pursue a piecemeal approval which failed to have regard to the development as a whole, including its context and visual effect. The Council also advances that despite requests, the applicants had failed to provide evidence to demonstrate the visual effects of the scheme to enable the determination of the application. They state that this was despite having requested a less onerous visual effects assessment. The Council advises that further to a meeting that took place in December 2020 to discuss the appeal scheme, they did not and could not agree amendments discussed in the absence of the submission of the required amended plans and evidence.
7. The Council advises that their delay in responding to the appeal was due to delays in securing elected members authority given limitations arising from Covid-19 restrictions. They advise that their scheme of delegation means that their statement of case could not be prepared in the absence of this authority.

Reasons

8. The Council failed to determine the planning application within the statutory timescale. The evidence is inconclusive as to why an extension of time was not secured. The building heights could not and had not been previously approved for the reasons outlined in my Decision. Both that dispute and the absence of a visual assessment, regardless of the reason, are not justifications for the Council to delay their determination. However, it is very clear that discussions took place between the main parties prior to the appeal being lodged. There is no firm basis for me to find that the Council's actions in that regard were anything other than to seek to achieve a positive outcome for Mr and Mrs Green. There is nothing before me to indicate that their anticipation that the dispute would be narrowed, if not eliminated, was unreasonable.
9. The officer report sets out the relevant planning issues, an assessment is provided, and the report makes it clear to the Council's members that it related to this appeal. The Council's assessment was not lacking and was based upon the evidence before them at the time. Moreover, I have concurred with that assessment based upon the evidence before me and my site visit. There is insufficient evidence before me to find that a misrepresentation of information occurred in that report which affected the Council's view of the appeal proposal. There is also insufficient evidence before me to find that subsequent to the lodging of the appeal the Council intentionally set out to conceal the details of the relevant committee meeting. The outcome of the committee resolution confirms that the application would have been refused. Either scenario was capable of triggering the right of appeal for Mr and Mrs Green and would delay development.

10. The Council's poor communication about their inability to meet the appeal deadlines is disappointing. However, they later demonstrated that delay was attributed to practical constraints arising from the Covid-19 pandemic, which in itself is unfortunate, rather than unreasonable.
11. Crucially, no substantive evidence has been brought before me which clearly shows that Mr and Mrs Green have incurred costs over and above that which would have been incurred from an appeal arising from a timely decision by the Council. Neither has it been demonstrated that the delays experienced at the appeal stage have resulted in further costs that could not have been reasonably anticipated when the decision to appeal was made by Mr and Mrs Green.

Conclusion

12. For the reasons given above, I do not find that unreasonable behaviour from the Council on substantive or procedural grounds, as described in the Planning Practice Guidance (PPG) is evident. Consequently, neither has any unnecessary expense in terms of defending this appeal occurred.
13. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

INSPECTOR