



Costs Decision

Site visit made on 15 June 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2021

Costs application in relation to Appeal Ref: APP/Y3615/W/21/3267871 Land to the rear of 5 Send Barns Lane, Guildford, Surrey GU23 7BT

- 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 Denton Homes for an award of costs against Guildford Borough 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 outline planning permission for 28 dwellings with associated landscaping and parking following the demolition of 5 Send Barns Lane. Creation of a new access off Send Barns Lane.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking an award of costs on procedural and substantive grounds.

Procedural

4. The applicant's claim on procedural grounds relates to the Council's behaviour during the determination of the planning application, particularly in regard to the length of time taken to process the planning application and the nature of communication with the applicant, which culminated in an appeal against non-determination.
5. Although costs cannot be claimed for the period during the determination of the planning application, the Guidance confirms that costs applications may relate to events before the appeal. It goes on to say that, 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

awarded. The guidance also states that all parties are expected to behave reasonably throughout the planning process and that the Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

6. The Guidance advises that the local planning authority should give the applicant a proper explanation, if it is clear that it will fail to determine an application within the time limits. In respect of any appeal against non-determination, it should explain its reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
7. The evidence before me is that, albeit that it was protracted, on-going engagement did take place between the Council and the applicant during the course of the planning application. This included the submission of revised and/or additional plans, viability information and supporting reports which were considered by the Council. There were several agreed extensions of time for the determination of the application, and the Council confirmed in early January 2021 that the application would be refused under delegated authority.
8. I appreciate the applicant's frustration in respect of the time the Council has taken to respond to various documents and correspondence submitted during the course of the application, and to provide updates on the progress of the application. However, I have taken account of the unprecedented impact on the work environment in general associated with Covid-19. I have also noted that the applicant did not seek pre-application advice from the Council, as advocated in the *National Planning Policy Framework 2021*, the willingness of the Council to engage with the applicant during the application process and accept and respond to additional/new information submitted by the applicant, and the formal agreement of several extensions of time between the Council and the applicant.
9. Accordingly, I conclude that the Council did not act unreasonably in failing to determine the application prior to the applicant submitting the appeal, which was lodged in accordance with established procedures in respect of non-determination appeals. Moreover, my appeal decision, which accompanies this costs decision, explains why I have dismissed the appeal. As such, the delay in determination has not resulted in an appeal which could have been avoided altogether.
10. The Council has provided an Officer Report (OR) and refusal notice confirming the Council's reasons why planning permission would have been refused, had the applicant not appealed against non-determination. The OR was sent to ward Councillors on 28 January 2021 under a 7-day notification process, the day before the Council were aware that an appeal had been lodged. The decision notice was issued on 24 February 2021, including notification to the Planning Inspectorate and to the applicant, prior to confirmation by the Planning Inspectorate that the appeal was valid on 8 March 2021.
11. I find that the Council's stated reasons for refusal, had it determined the application, as set out in the Officer Report, decision notice and subsequent appeal statement, to be complete, precise, specific and relevant to the application, and to clearly set out which development plan policies and national planning policy guidance against which the Council considers the

proposal would be in conflict, and to be adequately substantiated by the Council.

Substantive

12. The Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include not determining similar cases in a similar manner. The applicant considers that the Council has acted unreasonably by finding the appeal scheme layout to be unacceptable when, in the view of the applicant, it is very similar to that of a nearby approved development at Clockbarn Nursery. My accompanying decision explains why I have found notable differences between the schemes, and why, in any event, the current appeal must be determined on the merits of the scheme before me.

Conclusion

13. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

S Leonard

INSPECTOR