



Costs Decision

Site visit made on 26 October 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2021

Costs application in relation to Appeal Ref: APP/X1118/W/21/3272335 Land at Barton Cross, Instow, Devon EX39 4JQ

- 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 NDCI Ltd for a full award of costs against North Devon 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 erection of 5 dwellings, access, open space and associated works.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably in failing to make their decision within the prescribed period. They contend that significant and inexplicable delays in the determination of the application gave them little choice but to appeal.
4. PPG¹ further states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. The planning application was originally submitted in April 2019 but was converted from a reserved matters application to a full application in May 2019. It was not until approximately two years later that the appeal was submitted, which represents a significant amount of time and well beyond the prescribed period for a determination. Nevertheless, it is reasonably clear that up until about September 2020 the main parties were communicating and cooperating to improve the design quality of the proposal. Although there may have been some procedural issues and challenges facing the Council in that period, they

¹ Paragraph 048 Reference ID: 16-048-20140306

nevertheless were generally working positively with the applicant, as is encouraged by paragraph 38 of the National Planning Policy Framework.

6. However, following submission of the revised plans in September 2020 the evidence before me points to a dearth of communication on the part of the Council despite repeated requests from the applicant². It also seems that only limited progress was made in the 5-month period until February 2021. The Council generally refer to problems arising from increased workloads and staff turnover but acknowledge that this led to a slowdown in their ability to manage planning applications³. Be that as it may, it would not fully justify the limited communication and progress between September 2020-February 2021.
7. Problems with IT in accessing the revised plans are highlighted by the Council in September 2020 and the Council states that it was not until later in 2021 that the relevant Council officer realised that he had not seen the formal documents. No convincing explanation has been provided as to why this obstacle was not surmounted more quickly, particularly given the email⁴ from the applicant in September 2020 which expressly asked whether access to the plans had been obtained and offered an alternative method of transfer if required. Moreover, in their email dated 25 September 2020 the Council stated they understood the revisions were intended to supersede the original plans and that consultation and advertisement would take place accordingly. Consequently, it is unclear why it was subsequently the Council's view that they were only indicative, or why, given the earlier correspondence, they failed to check the apparent discrepancy at a much earlier juncture.
8. Furthermore, notwithstanding the generally supportive nature of officer discussions, I have not seen evidence that a firm timetable of when a formal decision would be arrived at was given to the applicant. It was not reasonable to expect the applicant to wait indefinitely for a formal decision. Informal officer advice is not a substitute for a formal decision and cannot be definitely relied upon when looking to advance development plans. In the absence of a credible alternative, albeit protracted timetable, it is understandable why the appellants chose to submit the appeal in order to secure a resolution of the application. This was signalled as a possibility to the Council in December 2020⁵.
9. It is evident from the Council's statement that had matters been expedited they would have gone on to approve the proposal. Therefore, the appeal could have been avoided.
10. Accordingly, I find that the explanation provided by the Council did not fully justify the prolonged delay between September 2020-February 2021. Furthermore, the infrequent communication that failed to set out a time scale for decision making amounted to unreasonable behaviour which contributed towards the applicant submitting the appeal. Had the Council acted differently in these respects it is likely that the appeal would have been avoided. Therefore, there is a direct causal link from the unreasonable behaviour of the Council which resulted in unnecessary expense in making the appeal.

² Table - Summary of events, Application of Costs against North Devon Council

³ Paragraph 2.6 Council's Costs Rebuttal

⁴ Email dated 28.9.20, Appendix D, Appellants' Statement of Case

⁵ Email dated 22.12.20 from Peter Grubb to Roger Bagley, Appendix D, Appellants' Statement of Case

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Devon Council shall pay to NDCI Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to North Devon Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Helen O'Connor

Inspector