
Costs Decision

Site visit made on 2 November 2021

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2nd December 2021

Costs application in relation to Appeal Ref: APP/W1850/W/20/3262388 Glebe Land, Millstream Gardens, Eardisley, Herefordshire HR3 6NR

- 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 Hereford Diocesan Board of Finance for a [partial] [full] award of costs against Herefordshire 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 the erection of up to 18 dwellings (to include 6 affordable homes), associated open space, landscaping and infrastructure, including access road and surface water balancing pond.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another to incur unnecessary or wasted expense in the appeal process. For an application for costs to succeed, an applicant will need to demonstrate clearly how any alleged unreasonable behaviour has also resulted in unnecessary or wasted expense.
3. The applicants state that the Council has been tardy in its negotiations in the matter of what should be included in the section 106 Obligation even to the extent of requesting contributions that were either unreasonable or did not have any planning policy basis. Despite having no planning objections, the Council failed to respond to various requests to agree heads of terms and only did so following the expiry of the statutory period for determination. Despite entering into pre-application discussions some two years previously, the heads of terms suggested by the Council were presented without prior engagement and included what the applicants believed, to be extraordinary requests for financial contributions, including monies towards sustainable transport, hospital services and GP surgeries. Some of the requests were later withdrawn when challenged but only belatedly.
4. Negotiations proceeded but at a slow pace resulting in unnecessary delays and the lodging of an appeal against non-determination some 9 months after the application submission. The Council allegedly disengaged in the process despite the applicants submitting draft heads of agreement which included a reasonable package of policy-compliant obligations. Further, the applicants

- offered to submit a joint statement to the Planning Inspectorate to aid a clear basis for an uncontested appeal. Instead, it is alleged that the Council has proceeded on the basis of out-of-date planning obligations policies with an attitude of “pay-up or be refused planning permission”.
5. The applicants believe that unreasonable behaviour on substantive grounds has occurred on the part of the Council and that a full award of costs should be made.
 6. For the Council, it accepts that negotiations have been protracted due in part to Covid-related problems. However, it also believes that it has responded to requests for reconsideration of the requests for financial contributions in a positive way and some of the applicants’ assertions are simply incorrect. It criticises the applicants in attempting to use the threat of costs at appeal as a bargaining tool. The Council points to the time taken by the Inspectorate to deal with the appeal itself and thus the alleged protracted timeframe is not due only to the Council.
 7. The National Planning Policy Framework (NPPF) makes it clear that Local Planning Authorities should approach development in a positive and creative way and work proactively with applicants. The cost regime generally should relate to the appeal process and not the planning application process itself, which often creates an atmosphere of tension. The PPG explains that if it is clear that the local planning authority will fail to determine the application within the time limits, it should give the applicant a proper explanation. It says that if there were no substantive reasons to justify delaying the determination, and if better communication with the applicant would have enabled the appeal to be avoided altogether, the local planning authority may be at risk of costs. Any unreasonable behaviour on the part of the appellant in causing or adding to the delay should be taken into account.
 8. Despite the time taken, I have not seen any clear evidence that the Council was particularly dilatory in considering the application. The section 106 deed was not signed until after the lodging of the appeal. Without a signed Unilateral Undertaking or s106 Agreement, the Council would have been unable to grant planning permission even had it been a position to do. The outstanding issue related to the request for contributions towards hospital services. The applicants agreed that the sums involved were modest; they were also aware that an appeal for a large development at Ledbury had been the subject of determination by the Secretary of State. As can be seen from my decision on this appeal, I found that the Ledbury decision was comparable in that there is no difference between allocated housing schemes and windfall developments.
 9. On the balance of probabilities, I conclude that the Council has not unreasonably delayed granting planning permission for the application as there were planning matters surrounding the s106 requirements that needed addressing. However, I accept that the Council should have explained the reasons for delay more clearly.
 10. That said, the submission of, and continuation with, appeals is a matter that is within the hands of any appellant. The applicants chose to appeal against the failure of the Council to determine the application rather than the potentially quicker route of establishing a revised scheduling with the Council thus avoiding the need to appeal against non-determination. Instead, both parties

chose to dig their heels in and proceeded to use unnecessary and somewhat inflammatory language in attacking each other's cases in what appeared to border on *fits of pique*. I found all this just created unnecessary tension and delays.

11. For the reasons set out above, I conclude that unreasonable behaviour that resulted in unnecessary expense in terms of the Guidance has not been demonstrated. The application for an award of costs is refused.

Gareth W Thomas

INSPECTOR