



Costs Decision

Site visit made on 28 September 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Costs application in relation to Appeal Ref: APP/C1435/W/21/3266366 Part of Great Barn, Briar House Farm, Dewlands Hill, Rotherfield, Crowborough TN6 3RU

- 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 David Proudfoot for a full award of costs against Wealden District Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on a prior approval application required under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

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

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 applicant has submitted copies of emails sent to the Council following the issue of its decision notice, explaining why they believed the proposed development benefitted from prior approval deemed to have been granted.
4. The Council has advised that it acted appropriately in the appeal process and that its decision to issue a notice stating its prior approval was required and refused on 23 November 2020 was correct and reasonable, considering the applicant did not submit a plan indicating the appeal site until 27 September 2020. The Council's approach was based on the information presented by the applicant and followed consultation with statutory consultees, with detailed arguments presented as part of the appeal. The Council has claimed the appeal could not have been avoided as the applicant had to address their concerns.
5. I have found that the Council chose to request further information from the applicant after the date on which an application for prior approval was received which accorded with the requirements set out in Paragraph W(2) of Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The Council was entitled to request this further information, but it did not affect the 56 day timeframe within which it was to issue a decision if prior approval was required.

6. By issuing a decision after the expiry of the 56 day timeframe and failing to reasonably address the applicant's emails explaining why the prior approval was deemed to have been granted prior to the submission of the appeal, I consider the Council left the applicant with few options to confirm prior approval was deemed to have been granted.
7. The Council's appeal submissions refused to accept the application dated 6 September 2020 met the criteria set out in Paragraph W(2) of Part 3 of the GPDO, despite both main parties referring to the relevant case law¹ which confirms the prior approval procedure is attended by the minimum of formalities. The plans submitted by the applicant on 6 September 2020 clearly complied with the brief requirements of the criteria set out at Paragraph W(2).
8. The Council therefore had opportunities prior to and during the appeal process to accept prior approval was deemed to have been granted, but instead the Council continued to argue the plans submitted on 6 September 2020 failed to indicate the appeal site. The Council also made late representations relating to the highway and transport implications of the proposed development and an alleged unauthorised extension to the appeal building. The submission of the Council's appeal representations after the applicant made it clear that the proposed development already benefitted from prior approval deemed to have been granted was unreasonable and the applicant incurred unnecessary expense in pursuing the appeal and responding to these arguments.
9. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has been demonstrated and an award of costs in favour of the applicant is justified.

Costs Order

10. 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 Wealden District Council shall pay to Mr David Proudfoot, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Wealden District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

L Douglas

INSPECTOR

¹ Murrell v SSCLG [2010] EWCA Civ 1367