

Costs Decision

Site visit made on 30 November 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2021

Costs application in relation to Appeal Ref: APP/R0660/W/3280497 Bryancliffe, Wilmslow Park South, Wilmslow SK9 2AY

- 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 Oaklyn Construction Ltd for a full award of costs against Cheshire East 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 three detached houses
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG 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, and why permission would not have been granted had the application been determined within the relevant time period.
4. The applicant's concerns relate to the failure to determine the planning application; delaying development which he considered should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations; and, the failure of the Council to engage in discussions aimed at resolving concerns through further amendments.
5. Following the advice in the National Planning Policy Framework (the Framework), the applicant sought advice from the Council prior to submission of the planning application. The planning application was subsequently validated on 16 April 2020, a short time after the first Covid-19 pandemic lockdown. According to the Council, the intention to consider the application at a Planning Committee meeting in June of that year was waylaid due to capacity restrictions resulting from an on-line working format required due to the pandemic. The Council explained this to the applicant at the time.
6. However, according to the applicant's detailed timeline of events, it wasn't until a month later that concerns were expressed in relation to the originally

submitted scheme and additional information was requested from the applicant. Following the timely submission of the requested information, the Council took another month to provide a detailed view that the scheme was unacceptable.

7. I acknowledge that there was some internal disagreement between the Council's Officers resulting in a stance that was contrary to advice given before the planning application was submitted. This is not an unusual occurrence and not, in itself, unreasonable behaviour. Furthermore, the initial delays which arose during the onset of the Covid-19 pandemic was largely outside of the control of the Council. Nevertheless, a 5-month delay after the validation of the application to arrive at an agreed view was a considerable period.
8. The Council did subsequently permit the applicant to change the proposal with a revised description. Unfortunately, there is conflicting evidence as to when those plans were submitted and therefore the extent of any delay in providing the initial feedback in mid-December is unclear. I also note that further discussions were frustrated by the Council's Officer taking an extended break over the Christmas period. However, follow-up information provided in January 2021 introduced a new concern in relation to the effect of the development on the Wilmslow Park South frontage. As an element of the scheme which had remained constant since the original submission, some frustration on the part of the applicant was not unwarranted after almost 9 months.
9. Since the submission of the revised scheme, the evidence suggests that there was only sporadic correspondence between the parties and some delay appears to have resulted from an inactive period on the part of both parties between the beginning of February and June 2021.
10. However, in the context of the appellant having taken pre-application advice and the delays caused, in part, by the successive divergent views within the Council, I find the Council's subsequent insistence on the withdrawal of the application as a precursive condition to further discussions to be somewhat perplexing and unreasonable. At a point 16 months after the original submission, and following a suspension of the Council's pre-application service, it is more so given the applicant's then ongoing willingness to extend the agreed deadline for determination.
11. In the face of advice in the Framework and PPG¹, I find the Council's stance did not reflect a positive, proactive or helpful approach to seeking solutions to problems arising in relation to dealing with a planning application. This is particularly so as the applicant had a reasonable expectation that the proposal would be supported at officer level. Although the Council has subsequently provided reasons as to why it considered the proposal does not accord with local and national policies, there is limited explanation as to why such extensive delays have occurred.
12. For those reasons, I conclude that the Council has failed to meet the guidance set out in the PPG. Notwithstanding my own findings in relation to the proposal, this leads me to the conclusion that it has acted unreasonably in the particular circumstances of the case and has subsequently caused the applicant wasted expense in the appeal proceedings. A full award of costs is therefore justified.

¹ Paragraph 049 Reference ID: 16-049-20140306

Costs Order

13. 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 Cheshire East Council shall pay to Oaklyn Construction Ltd the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR