



Costs Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2022

Costs application in relation to Appeal Ref: APP/R1845/X/21/3283420 Wyre Mill Cottage, Mill Lane, Wolverley, Worcestershire DY11 5TR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Tim Partridge for a full or partial award of costs against Wyre Forest District Council.
 - The appeal was against the deemed refusal of a certificate of lawful use or development for the siting of beehives (building or enclosure) for the keeping of bees, surrounded by a new fence of less than two metres high and siting of a caravan.
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Decision

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

Reasons

2. Paragraph 030 of the Appeals section of the national Planning Practice Guidance (PPG) 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. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
3. The applicant considers the Council acted unreasonably by failing to determine the application in a timely manner; not providing a clear and precise reason for refusal and refusing each of the uses proposed either collectively or individually; and not disclosing evidence it has relied upon in making its decision.
4. If it is clear that a Council will not determine an application within the prescribed time limit, it should give the applicant a proper explanation. The LDC application was validated on 26 July 2021 with a target determination date of 20 September 2021. The appeal against non-determination was submitted on 21 September 2021.
5. The PPG advises that, in an appeal against non-determination, the Council should explain its reasons for not reaching a decision within the relevant time limit, and why the application would not have been granted had it been determined within the relevant period. The Council's statement fulfils the second of these requirements, setting out a case for dismissing the appeal, but reasons for not reaching a decision are not stated. However, in a response to the costs application, the Council stated that any delays in the determination process were to allow for a full and proper consideration of the existing case law for what is both a complex and unusual scenario in terms of the impact of the proposal on an established public right of way.

6. Although substantive reasons to justify the delay to the application were not provided, the Council has clearly set out why, if it had made a decision, it would have refused to issue a certificate. Furthermore, although incorrect reference was made to the neighbouring property, the applicant was aware that this was in error. Accordingly, even if there had been better communication, it is unlikely that the applicant would have been spared the need to pursue an appeal. For this reason, and while the limited explanation for the delay may be unreasonable behaviour, it has not been demonstrated that the applicant incurred unnecessary or wasted expense in the appeal process as a result.
7. The applicant considers that the Council could have made a split decision to allow the fence to be erected and the siting of the beehives, as this would not be limited by a requirement to be within the curtilage of the dwellinghouse. However, the Council considered both to be development permitted by Part 1, Class E of the GPDO subject to it being within the curtilage. I note that the description of the development provides that the certificate sought the lawfulness for the "siting of beehives (building or enclosure) and that it was the appeal statement that clarified the nature of their construction. Nevertheless, it was the Council's opinion that the development proposal as a whole would not be lawful.
8. The applicant refers to evidence the Council relied upon in making its decision not being disclosed. It seems to me that the Council, relying on its determining factor being the extent of the curtilage, had made this known to the applicant through questions raised at the early stages of the application process. The applicant also refers to case law and legal opinion not being made available to him by the Council. However, the Council's case does not rely on or refer to case law. In any case, the applicant's appeal submissions demonstrate that he is aware of such case law and I consider that any undisclosed "evidence" from the Council would have limited impact on the outcome of the LDC application and the need to appeal the decision against non-determination.
9. Although the Council took a different view to me in determining the appeal, and the applicant suggests an inconsistent approach to its decision making, its deemed determination was based on an interpretation of the GPDO that it considered appropriate to the application and information contained in the application. Whilst I found that the Council's case was not well founded, it was clear and precise. Furthermore, the Council was entitled to make the judgement it did.
10. Overall, and for the reasons above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full or partial award of costs is not justified.

S A Hanson

INSPECTOR