



Costs Decision

Site visit made on 8 February 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2022

Costs application in relation to Appeal Ref: APP/D3505/W/21/3275718 Land south of Daking Avenue, Boxford, Suffolk, CO10 5AA

- 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 and Mrs Keeley for a full award of costs against Babergh District Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for Erection of 6 dwellings, ancillary outbuildings, vehicular access and associated works (including access to Primrose Wood).
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Decision

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

Preliminary Matter

2. The applicants' claim for an award of costs states in part:

'At the date of this Statement the Appellant claims no costs from the submission of this Appeal, however, should the matter become protracted or further legal or planning advice be required, the Appellant reserves the right to claim any such costs'

3. No such further representations, in relation to a claim for an award of appeal costs, have been received.
4. Notwithstanding this, the applicants' statement indicates that they seek to claim costs for work undertaken relating to pre-application discussions and the planning application (including the planning application fee). However, costs can only be awarded in relation to unnecessary or wasted expense in the appeal process. As such, there is no scope to award costs for expenses which occurred outside of the appeal process, for example during the planning application process. In any case, for completeness, I have considered the issues raised in the applicants' cost application below.

Reasons

5. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the 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.
6. The applicants allege that the Council acted unreasonably in failing to determine the planning application. Whilst the Council did fail to determine the planning application, it is clear from the evidence before me that the Council

was in direct correspondence with the applicants with regard to the reasons for the delay. That said, I have some sympathy for the applicants given that the reason given for the delay pertained to the implications of a planning application being considered on a site elsewhere in the district.

7. Notwithstanding this, there is no compelling evidence to suggest that there was any unnecessary expense incurred by the applicants as a result of this delay. This is because the Council swiftly issued a decision notice on 28 May 2021, three days after the appeal was submitted. This does not alter the fact that the Council failed to determine the planning application (given that the decision was issued after the appeal was submitted and the Council therefore no longer had the jurisdiction to do so). However, it is clear that the applicants' Statement of Case is based on the reasons for refusal outlined in the decision notice. As such, there was no unnecessary expense incurred in preparing this evidence. Furthermore, the applicants have not suggested that they would not have appealed had they known what the Council's reasons for refusal were. As such, the delay in the determination of the planning application did not result in any unnecessary appeal expenses.
8. There is also an indication within the applicants' submissions that the planning application was submitted partly on the basis of pre-application advice received from the Council. However, pre-application advice is not a guarantee of a grant of planning permission and there is no compelling evidence to suggest that this advice resulted in unnecessary or wasted appeal expenses.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Luke Simpson

INSPECTOR