The Planning Inspectorate

Costs Decisions

Site visit made on 1 March 2022

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2022

Costs application in relation to Appeal Ref: APP/K2420/X/21/3281105
Fairway Cottage, Leicester Road, Hinckley LE10 3DR

- 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 Ms Joanne Haddon for a full award of costs against Hinckley & Bosworth Borough 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 a certificate of lawful use or development for a development described as 'Construction of a building incidental to the enjoyment of a dwellinghouse in accordance with Class E of the GPDO'.

Costs application in relation to Appeal Ref: APP/K2420/W/21/3277395
Fairway Cottage, Leicester Road, Hinckley LE10 3DR

- 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 Ms Joanne Haddon for a full award of costs against Hinckley & Bosworth Borough Council.
- The appeal was against the refusal of planning permission for an extension to existing dwelling.

Decision: APP/K2420/X/21/3281105

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

Decision: APP/K2420/W/21/3277395

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

Reasons: APP/K2420/X/21/3281105

Background

3. The Government's 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 can be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal). The PPG includes examples of where a local planning authority's behaviour might lead to an award of costs.

4. The application is made on the basis that the Council failed to work proactively with the applicant in accordance with Paragraph 38 of the National Planning Policy Framework (the Framework). The applicant also raises the Council's handling of the related proposal to extend Fairway Cottage, and advises that the only reason the LDC application was made was to put forward a 'fallback position' in relation to the extension proposal. Thus, costs are sought not only in relation to the appeal, but also in relation to the making of the LDC application in the first place. Furthermore, the Council failed to determine the LDC application within the prescribed period, causing the appeal.

5. The Council has not made any response to the application for costs.

Assessment

6. The applicant suggests that approving the LDC application would have undermined the Council's decision to refuse the application to extend Fairway Cottage. Whatever its motivation, it is a matter of fact that the Council did not determine the LDC application within the prescribed period. The Council has not given any explanation for this. This has led to an appeal being made. Additionally, the applicant advises that the Council has failed to respond to various requests to discuss the application.

7. The PPG advises[1] that, if it is clear that the local planning authority will fail to determine an application within the time limits it should give the applicant a proper explanation. 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 period. In this instance I find that, in failing to determine the application, and in the absence of any explanation for that failure, the Council acted unreasonably.

8. Nevertheless, a costs award is only justified where unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It is important here to establish the limitations of the costs regime. As the PPG makes clear, costs cannot be claimed for the period during the determination of the planning application (although behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded). The cost of making and progressing the LDC application are not costs incurred in the appeal process and are not eligible for recovery through this application for costs.

9. As to the costs of the appeal, I have concluded that the Council behaved unreasonably in not determining the LDC application within the prescribed timescale. The PPG advises that, if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.

10. In this instance, however, I have not allowed the appeal. While delaying the determination does not appear to have been justified, I have no reason to conclude that better communication with the applicant would have enabled the

[1] Paragraph: 048 Reference ID: 16-048-20140306

appeal to be avoided altogether. Indeed, it is clear from the Council's statement that it would have refused to issue a certificate if it had determined the application. Having seen the Council's case at appeal, the applicant has continued to argue that the building is permitted development. Thus, it appears probable that there would still have been an appeal if the Council had determined the application. In view of this, and since I have concluded that a certificate should not be issued, I do not regard the appeal as unnecessary. I therefore find that unnecessary or wasted expense has not been incurred.

Conclusion

11. For the reasons set out above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

Reasons: APP/K2420/W/21/3277395

Background

12. The application is made on the basis that the Council failed to work proactively with the applicant in accordance with Paragraph 38 of the Framework. It is said that the lack of communication led to the Council making its decision without important documents, drawings and information that would have enabled it to make an informed decision.

Assessment

13. The applicant's agent has provided details of communications with the Council during the determination of the planning application. This shows that there was no response to a number of emails. The evidence also indicates that the Council was slow in dealing with the application, seeking several extensions of time.

14. The applicant also says that the Council failed to have regard to drawings submitted before the case was determined. The Council has not given any clear reason for rejecting the drawings. The claim that it would need to have carried out further consultation on them appears to be based on a misapprehension that the drawings amended the scheme (in fact, their purpose was to compare the appeal scheme to alternative forms of development the applicant had identified).

15. However, costs cannot be claimed for the period during the determination of the planning application[2]. Consequently, the Council's handling of the planning application is only relevant to the extent that it might have caused the appeal unnecessarily or unnecessarily added to the costs associated with it. While any delay in dealing with the planning application would have been frustrating for the applicant, it does not appear to me to have caused or added to the costs associated with the appeal.

16. It also seems unlikely that the Council would have reached a different decision if it had accepted the drawings. The applicant had already provided a drawing comparing different options for the site (Drawing No 275/013). Moreover, it is

[2] PPG Paragraph: 033 Reference ID: 16-033-20140306

clear from the delegated report that the Council considered existing planning permissions and the prospect of developments using permitted development rights as part of its assessment of the scheme. It has also continued to oppose the scheme at appeal, despite the additional drawings. Accordingly, I am not persuaded that accepting the drawings would have led to any different outcome.

17. While it might be that some amendments could have been made to the scheme if the Council had engaged more with the applicant, the information before me does not indicate that its concerns could have been addressed to the extent that permission would have been granted.

18. Overall, I am not persuaded that the Council's handling of the planning application led to it refusing a scheme it would otherwise have permitted. Nor do I consider that it was wrong to refuse planning permission, for the reasons set out in the appeal decision. Consequently, the Council's actions did not lead to an unnecessary appeal or unnecessary/wasted expense.

Conclusion

19. For these reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

Peter Willows

INSPECTOR