

Costs Decisions

Hearing Held on 1 March 2022

Site visit made on 1 March 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Costs application in relation to Appeal Ref: APP/H1840/W/20/3245884 Shorthill Caravan Park, A449 Mitre Oak to Crown Lane, Crossway Green DY13 9SH

- 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 Hubert O'Doherty for a full award of costs against Wychavon District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the use of land for the stationing of caravans for residential purposes for 10 no. gypsy pitches, 1 site managers pitch together with the formation of additional hard standing and utility/dayrooms ancillary to that use, and the siting of 24 no. touring caravans for transit pitches for use by gypsy and travellers.
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Decision

1. The application for a full award of costs is refused.

The submissions for Mr Hubert O'Doherty

2. A draft/skeleton costs application was emailed to the Planning Inspectorate before the Hearing on 25 February 2022, which was also copied to the Council. The applicant then expanded on the claim, orally at the Hearing. The applicant is seeking a full award of costs, but has stipulated that a partial award of costs should be awarded if the substantive claim is not justified based upon the unreasonable behaviour displayed by the Council.
3. The applicant considers that refusing to determine the application constitutes unreasonable behaviour and consequently forms the basis of the application. Furthermore, the applicant contends that the Council have continued to act unreasonably in defending the appeal when presented with their appeal submission, including his Appeal Statement and Updated Appeal Statement, which included a note from Counsel. It was advanced at the Hearing by the applicant that there was no merit in the Council's approach.

The response by Wychavon District Council

4. The Council responded verbally to the applicant's grounds for an award of costs at the Hearing. The issue surrounding the failure to determine the application was not considered to be a trivial matter and was a complex one. The applicant was afforded the opportunity to revise the application, but declined. Whilst the applicant states the matter is obvious, the Hearing has been dominated by the technical matter surrounding whether or not the condition can be removed as

requested. Consequently, the situation is not close to the basis of a costs application.

Reasons

5. The 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. Costs may be awarded to any party regardless of the outcome of the appeal. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal or with respect to procedural matters by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
6. The application was submitted to the Council on 18 October 2018 under section 73 of the Town and Country Planning Act 1990 (the Act). The applicant appealed on the grounds of the Council's failure to determine the application on 29 January 2020. It is not disputed that there was a failure by the Council to issue a decision within the statutory timeframe. However, the Council has given a judgment¹ as a reason for its non-determination. It is also apparent that there was dialogue between the parties, in relation to the lack of progress of the application subject of this appeal. Whilst a solution surrounding the site plan submitted with the application was put forward by the Council, this was not accepted by the applicant given the refusal of the previous application².
7. It will be seen from the decision in the appeal that I reached a similar conclusion to the Council with regard to whether or not the requested condition could be removed as requested. Having regard to this, even if the Council acted unreasonably by delaying determination, it did not delay development that should have been permitted having regard to the Act and other material considerations, particularly the findings in *Finney*. Therefore, the Council's behaviour did not cause the applicant to incur wasted costs as an appeal was inevitable in any event.

Conclusion

8. On the basis of the evidence before me, I conclude that it has not been demonstrated that the Council's unreasonable behaviour caused unnecessary or wasted expense in so far as an award of costs could be justified. I therefore determine that the costs application should fail and no award is made.

W Johnson

INSPECTOR

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868 (Finney)

² 17/01008/COU