

Costs Decision

Site visit made on 5 April 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal Ref: APP/K0425/W/21/3282059

Rear of Comilla & Chiltern, Wycombe Road, Stokenchurch HP14 3RP

- 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 Jagdeep Barar, Barar Homes, for a full award of costs against Buckinghamshire Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The application sought planning permission for the Erection of 1 pair of two storey dwellings with associated parking and landscaping without complying with a condition attached to planning permission Ref 20/05793/FUL, dated 18 August 2020.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only 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.
3. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account when considering whether or not costs should be awarded
4. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the merits of the appeal. A procedural award can relate to: -
 - Delay in providing information or other failure to adhere to deadlinesSubstantive awards can relate to: -
 - Not determining similar cases in a consistent manner; or
 - Refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have

resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

5. The PPG advises at Paragraph 32 that an "...an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense".
6. The applicant asserts that only one contact was received from the case officer during the consideration of the application. This was a telephone conversation in May 2021 following comment received from the Highway Authority in February 2021. This is refuted by the Council who assert that the agent was informed of the Highway Authorities comments, immediately after their receipt, and the applicant was provided with an opportunity to submit amendments to avoid a refusal of planning permission.
7. On being made aware by the applicant of a similar proposal in the immediate vicinity of the appeal site, where reduced parking requirements were accepted, the Council sought the further views of the Highway Authority. Despite taking this additional information into account the Highway Authority confirmed their opposition to the appeal development. The Council asserts that this information was conveyed to the agent providing a further opportunity to amend the scheme. This is disputed by the applicant who states that at no time were they informed that amended drawings would be required or that the Highway Authority had been reconsulted on the issue.
8. I note the applicant's comment that following the initial contact they have not been able to receive any further updates, despite efforts to contact the case officer and their senior line managers, by both telephone and e-mail. In this regard I have been provided with an e-mail trail dating from 11th March 2021 until 7th July 2021, requesting an update on the application, without any substantive reply. For its part the Council say that the applicant was updated on numerous occasions during the determination of the application, but I have no evidence to substantiate this assertion.
9. It seems to me that the engagement between the parties has not been as constructive or effective as it should have been. The Council accepts that ultimately it must decide if there is merit in their case, or if it would be difficult to sustain an objection at appeal given the precedent set-out in the decision notice for development on a nearby site. I find that had the Council considered the comments from the Highway Authority, and the precedent, at an earlier stage in the process, it is possible that a decision could have been made on the application and the appeal could have been avoided.
10. In light of the foregoing, I find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. A full award of costs is therefore justified.

Conclusion

11. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. Consequently, the cost application is allowed.

Costs Order

12. 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 Buckinghamshire Council shall pay to Mr Jagdeep Barar, Barar Homes, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Buckinghamshire 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. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

John Gunn

INSPECTOR