The Planning Inspectorate

Costs Decision

Site visit made on 4 May 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 13th June 2022

Costs application in relation to Appeal Ref: APP/T0355/W/21/3287327
Land at Binfield Paddocks, Twyford Road, Binfield, Bracknell RG42 5QE

- 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 Craig Harrod for a full award of costs against Royal Borough of Windsor and Maidenhead.
- The appeal was against a failure to give notice within the prescribed period of a decision on an application for outline planning permission for construction of M4 Noise Abatement and Landscaped Screening Bund.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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. It goes on to state that local planning authorities (LPAs) are at risk of an award of costs if they make vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. If it is clear that an LPA will fail to determine an application within the time limits, the PPG is also clear that the LPA should give the applicant a proper explanation.

3. The appeal application was validated by the Council on 18 August 2021, and was therefore due to be determined by 13 October 2021. Details of the assigned case officer were only communicated to the applicant on 8 October, just 5 days before the expiry of this deadline. In this same correspondence, the case officer requested an extension of just 2 days to determine the application, up to the 15 October 2021. Whilst ultimately no decision was issued within this revised timeframe, this meant very little opportunity for any dialogue was afforded to the applicant with regard to the application. This is not conducive to a fair and transparent process.

4. This issue was compounded by the brief, vague and generalised emails which were sent by the case officer during determination of the application. No clear explanation was given as to why the development was deemed inappropriate, even though the appellant had cited several examples of nearby bunds which had been permitted. In its Statement of Case, the LPA discounted these examples as they were "*not as extensive in their dimensions*" as the proposed bund. However, one of the examples cited by the applicant was in fact much larger than the proposed development, which suggests the Council's analysis was inaccurate.

5. Moreover, any concerns regarding the ecology of the site do not appear to have been raised by the LPA during determination of the appeal. This meant the applicant had no opportunity to properly respond to this issue, nor overcome this proposed second reason for refusal. This has meant that the applicant has needed to address a second reason for refusal in the appeal, which could potentially have been avoided if communication between the LPA and the applicant had been more effective.

6. Finally, despite continued delays with determination of the application, communication from the LPA remained scarce, and very little explanation was ever provided to the applicant regarding the delays, whether at the outset, or further along in the process. This continued delay and lack of communication meant the applicant was left with little option but to pursue its appeal against non-determination.

7. On account of these factors, I find that the LPA's treatment and consideration of the application was flawed, contrary to the provisions of the PPG. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Royal Borough of Windsor and Maidenhead shall pay to Mr Craig Harrod, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

9. The applicant is now invited to submit to Royal Borough of Windsor and Maidenhead, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

James Blackwell

INSPECTOR