
Costs Decision

Site visit made on 4 May 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Costs application in relation to Appeal Ref: APP/K2420/W21/3283890 Land off Higham Lane, Stoke Golding CV13 6EX

- 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 Hallmark Properties (Leic) Limited 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 erection of a dwelling.
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Decision

1. The application for costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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. The applicant's application for costs is based on the alleged unreasonable behaviour of the local planning authority (LPA) and wasted expense, for procedural and substantive reasons, as considered below.
4. In respect of procedural matters, the application was dated 25 May 2021 but was not determined within the statutory period. The only reason for this delay appears to be due to the LPA not having received the Conservation Officers response. However, to determine planning applications within the statutory timescales it is necessary for consultees to respond in a timely manner. Therefore, this is not a satisfactory reason for the failure to determine a planning application within the required timescales.
5. Nonetheless, the LPA contacted the applicant's representative on the 3 August 2021, apologising for the delay in the processing of the application and set out reasons for why the proposal could not be supported and invited the applicant to withdraw the application. On the information before me, this was the only contact the LPA made with the applicant, prior to the appeal being made.
6. In the absence of any evidence to the contrary it appears that the applicant's representative attempted to contact the LPA prior to submitting the appeal but received no response. Although the LPA sent a second reply to the applicant, this was after the appeal had been made and therefore was of no benefit to the application process.

7. One of the LPAs putative reasons for refusal is based on the consultation response from its Conservation Officer. Because that response was received after the applicant had lodged an appeal, there was no requirement for the LPA to forward this directly to the applicant.
8. Nevertheless, the Conservation Officers response was not provided with the LPAs initial appeal submissions and was only made available following a request from the applicant via the Planning Inspectorate. The applicant also advises that the LPA failed to send him a copy of the completed appeal questionnaire.
9. The failure of the LPA to determine the planning application within the statutory timescale without any substantive reasons and delay in providing the Conservation Officers consultation response within the required timescale at appeal, along with not sending a copy of the completed appeal questionnaire to the applicant's representative, constitute unreasonable behaviour on procedural grounds. I shall return to these matters later.
10. Turning to the substantive reasons, whilst the LPAs initial response about the proposal was brief, this provided a clear indication of its concerns about the proposal in relation to the effects on the countryside and the Conservation Area.
11. At appeal the LPA has put forward putative reasons for refusal which are complete, precise, specific and relevant to the proposal and refer to policies in the development plan and the National Planning Policy Framework. Also, the LPAs conclusions about the effects of the proposal are supported by objective analysis, set out in its appeal submissions.
12. Accordingly, and based on my findings in respect of the appeal, the LPAs stance in respect of the proposal in relation to substantive matters does not amount to unreasonable behaviour.
13. Nonetheless, the LPA acted unreasonably with regard to the procedural matters set out above. However, to make an award of costs I need to be satisfied that these matters resulted in unnecessary or wasted expense in the appeal process.
14. The PPG states 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. 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.'
15. In this case although the LPA has not provided any substantive reasons for not reaching a decision within the relevant time limit, it has explained why permission would not have been granted had the application been determined within the relevant period. Furthermore, having found the appeal in favour of the LPA, I am satisfied that the LPA did not delay or prevent development

which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.

16. Although the Conservation Officers consultation response was received late in the appeal process, the applicant was provided additional time to respond to this. Whilst the appeal questionnaire was not forwarded directly to the applicant, there is nothing before me to suggest that this disadvantaged the applicant at appeal.
17. The applicant alleges that by failing to provide the Conservation Officers response to the proposal during the application process, the opportunity to amend this was lost. However, there is no certainty that an amended scheme would have resulted in a favourable outcome for the applicant.
18. Based on my findings on the applicant's appeal and information before me, there is no substantive evidence that the LPA has dealt with planning applications in the Stoke Golding area in an inconsistent manner.
19. Any discrepancies in the way the applicant's application was publicised by the LPA is unfortunate. This, however, has not affected the outcome of the appeal.
20. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal

INSPECTOR