



Costs Decisions

Hearing Held on 18 May 2022

Site visit made on 18 May 2022

by Martin Small BA (Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Costs application in relation to Appeal Ref: APP/Z2260/W/21/3282151 St Nicholas Court Farm, Court Farm, St Nicholas at Wade, Birchington, CT7 0PT

- 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 St Nicholas Court Farms Limited for a full award of costs against Thanet 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 erection of building to provide farm worker crew and training rooms.
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Costs application in relation to Appeal Ref: APP/Z2260/W/21/3282043 St Nicholas Court Farm, Court Farm, St Nicholas at Wade, Birchington, CT7 0PT

- 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 St Nicholas Court Farms Limited for a full award of costs against Thanet 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 erection of building to provide seasonal farm worker accommodation..
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Decisions

1. The application for a full award of costs in respect of Appeal A is allowed.
2. The application for a full award of costs in respect of Appeal B is refused

Reasons

3. National Planning Practice Guidance (PPG) advises that, regardless of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of a planning application can be taken into account in the consideration of whether or not costs should be awarded.
4. The application for costs follows the failures of the Council to issue notices of its decisions within the prescribed period. The planning applications were

dated 4 February and 2 February 2021 and both validated on 11 February 2021. The prescribed 8 week period therefore expired on 8 April 2021, although the appellant agreed extensions to 21 April 2021.

5. The applicant was advised in an email on 26 May 2021 that the case officer would be going on maternity leave soon and that it was likely that the applications would be passed to another case officer. The Council's Head of Planning advised on 24 June 2021 that the Council was securing the services of planning consultants to deal with a number of cases from the Council's backlog, including those the subjects of these appeals.
6. However, no indication of a likely date of determination was given and no further communication was received from the Council. After having waited for nearly 7 months for a decision and still not having received an indication of when the application would be determined, it is understandable and not surprising that the applicant chose to exercise his right to appeal in order to resolve the matters. In doing so, the applicant has incurred the costs of engaging professional representation.
7. The PPG advises 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 authority should explain their reasons for not reaching a decision within the relevant time limit. In these cases, the Council requested further information and initially explained to the applicant why there would be delays in determining the applications. The decisions were delayed partly due to the request for further information on the need for the proposed developments. Therefore, although the lack of communication with the application after 24 June 2021 was not ideal, I do not find that the Council behaved unreasonably in respect of these particular matters.

Appeal A

8. Although the original case officer's emails of 24 March and 30 April 2021 refer to the need for / principle of the proposed development, information on which was provided orally at the Hearing, the Council accepted at the Hearing that Policy SP24 did not require need to be demonstrated. The Council's concern over the effect of the proposed development on the character and appearance of the area is based on the contended lack of need but this is not how, on a plain reading, Policy SP26 is constructed.
9. The Council has therefore failed to substantiate its indicative reason(s) for refusal. I have found that the proposed development is in accordance with the development plan and material considerations and thus should have been permitted without delay. I find that the failure to do so amounts to unreasonable behaviour by the Council and has directly caused the applicant unnecessary and wasted expense in the appeal process.

Appeal B

10. The Council also queried the need for the proposed development in Appeal B. Although Policy HO17 did not form part of the Council's case, the Council's concerns over the effect on the character and appearance of the area were sufficient to invoke the requirement of Policy SP26 to demonstrate an essential need.

11. The applicant suggests a number of inaccuracies in the Council's Statement of Case, including the Council's view that the site is within the open countryside and the reference to a tree belt that had been removed as advised to the Council. The Council identified the wrong site in its Statement of Case resulting in an inaccurate measurement of the distance between the proposed building and the nearest existing staff accommodation. The Council still referred to the loss of the boundary screening to Court Road despite confirmation of its retention in an email of 21 April 2021. Addressing these inaccuracies has necessitated additional time to prepare and respond for the Hearing.
12. However, it is implicitly agreed between the parties that the site is within the countryside. The Council contends that the reference to the tree belt was in relation to the previous character of the area. Whilst the Council accepts that the site is incorrectly indicated in its Statement of Case and the measurement of distance was thus in error, it is correct that the site is to the north of the main farm complex. The proposed block plan submitted with the application did not show the existing vegetation to the boundary with Court Road nor did the revised site layout submitted subsequently. Therefore, notwithstanding the applicant's email, the Council's uncertainty over whether or not this vegetation was to be retained is reasonable.
13. The Council has acknowledged some inaccuracies in its case for the appeal. However, it is clear that it still had concerns regarding the effect on character and appearance despite those inaccuracies. Although I have come to a different conclusion in this respect, this is a matter of planning judgement.
14. I therefore find that the Council has substantiated its indicative reasons for refusal in this case and I found that the proposal does not accord with the development plan. The appeal therefore could not have been avoided. I do not find that the Council has behaved unreasonably in this case.

Conclusions

15. I therefore conclude, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated in Appeal A and merits a full award of costs. However, I do not find that the Council has behaved unreasonably in respect of Appeal B resulting in unnecessary or wasted expense. Therefore, no award of costs is justified in that case.

Costs Order

16. 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 Thanet District Council shall pay to St Nicholas Court Farms Limited the costs of the Appeal A proceedings described in the heading of these decisions.
17. The applicant is now invited to submit to the Council, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Small

INSPECTOR