



Costs Decision

Site visit made on 21 June 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2022

Costs application in relation to Appeal Ref: APP/Z3825/W/21/3289925 Warley Farm Barn, Hammerpond Road, Plummers Plain, Horsham RH13 6PE

- 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 the Mr and Mrs Colin Delaney for a full award of costs against Horsham District Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for conversion of redundant agricultural barn to dwelling and erection of single storey extension with landscaping, parking and creation of new access onto Hammerpond Road without complying with a condition attached to planning permission Ref DC/19/1360, dated 17 February 2020.
-

Decision

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

Reasons

2. The Planning Practice Guidance ('the PPG') advises that costs may be awarded where a party has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. Examples given by the PPG of unreasonable behaviour that may result in an award of costs against a local planning authority ('LPA') include 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; and situations where a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed. The PPG also explains that if it is clear that the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation.
4. The applicants' evidence outlines that the appeal application was submitted to the Council on 6 May 2021. It was not until 1 July 2021 that the Council requested a planning statement from the applicants. The statement was submitted on the same day and the application validated, with a target determination date of 26 August 2021. Consultation on the application then took place in July, but the applicants advise that the Council did not post a site notice until 30 November 2021. They further advise that despite enquiries made by the applicants in September, October and November, the Council did not provide an update on the application until 14 December 2021, nearly 4 months after the application was due to be determined and over 10 months since it was submitted.

5. The Council has not disputed this timeline of events, nor offered an explanation in response to the costs application that might justify the delays in validating or determining the application, posting the site notice or providing the applicants with any update on progress.
6. From the evidence before me, I consider that the continued delay throughout the period that the application was before the Council was excessive and unreasonable. The lack of engagement with the applicants and apparent failure to respond to repeated enquiries for updates or to explain the reasons for not reaching a decision is further highly regrettable, and is contrary to advice within the National Planning Policy Framework including that authorities should approach decisions in a positive and creative way.
7. However, given the nature of the Council's concerns regarding the materiality of the changes that were proposed from the development approved under application ref DC/19/1360, it seems to me unlikely that these matters could have been resolved through prompt engagement or discussion.
8. The applicants assert that a judgement on whether the changes proposed to the original permission would amount to minor material amendments should be exercised at the validation stage. They argue that the Council should not have validated the application if it considered the proposal to be more than a minor material amendment, and that it was unreasonable for the Council to then reach this view after it had validated the application.
9. However, as my Appeal Decision records, validation is in my experience primarily an administrative process that is generally concerned with ensuring that sufficient information has been submitted to allow proper consideration of a proposal. Conversely, the assessment of whether or not a proposal comprises a 'minor' material amendment requires a judgement to be made having full regard to the circumstances of the case, and may, depending on the situation, need to be informed by evidence that could include representations made by consultees or interested parties and observation of site conditions. I am not convinced that it would necessarily be possible or reasonable to make such an assessment in advance of an application being validated, and I do not therefore find that it was unreasonable of the Council to reach the view that it did once it had had an opportunity to consider the proposal.
10. Moreover, while I have not agreed with all elements of the Council's case, I have also concluded that the proposed changes would go beyond a minor material amendment and would be too substantial to be considered under a section 73 application. The Council's concerns were not therefore unreasonable or without substance.
11. Consequently, while the Council's communication and handling of the application could have been significantly improved, the outcome is unlikely to have been altered if the Council had adopted a more helpful approach. The appeal could not therefore have been avoided, and it follows that the applicants have not been put to unnecessary expense in the appeal process.

Conclusion

12. For these reasons, I conclude that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not

been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR