



Costs Decision

Site visit made on 30 March 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19th July 2022

Costs application in relation to Appeal Ref: APP/E0915/W/21/3284915 Glen Croft, West Hall, Brampton CA8 2BS

- 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 Ms Sally Oliver for a full award of costs against Carlisle City 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 planning permission for part retrospective proposal to Site 3 x moveable 'Eco-Home' holiday chalets and creation (retrospective) of hardstanding.
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Decision

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

Reasons

2. 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.
3. The PPG states that the Inspector can take into account behaviour and actions at the time of the planning application when considering whether or not costs should be awarded. It also advises that in non-determination cases the Council may be at risk of an award of costs if there were no substantive reasons to justify delaying determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
4. This application for costs follows the failure of the Council to issue a notice of its decision within the prescribed period. The applicant has advised that the appeal has been caused by the Council not providing any reasons for the delay and its failure to respond to clarification requested. They consider that this lack of communication represented unreasonable behaviour and resulted in unnecessary and wasted expense.
5. The planning application was submitted on 12 August 2021 and the Council confirmed that it would determine the application by 8 October 2021. The letter outlined the planning appeal process if an extension of time was not agreed, or the Council failed to give its decision by the date specified.
6. The Council did not contact the applicant during determination and did not respond to requests for clarification on 8 or 12 October 2021 regarding when

the decision was due and if the Council had any queries. On 15 October 2021, the applicant submitted the appeal application.

7. The Council advise in its appeal statement that increased workload due to the Covid-19 pandemic and staffing issues delayed determination. Furthermore, it advised that due to the application having more than three objections, it had to be considered by the Development Control Committee and the earliest meeting date was 3 December 2021.
8. The Council also confirmed that the applicant contacted them on 8 and 12 October 2021 but that very little time was allowed for it to respond before the appeal was made. It also noted that no pre-application advice was sought which may have clarified the raised appeal statement ambiguities regarding diversification, terminology and landownership. They also noted that the applicant only contacted the Case Officer and no other member of staff.
9. The applicant noted that pre-application advice was not a pre-requisite of a planning application and reiterated that the lack of communication by the Council forced the need to appeal.
10. I fully accept that the Council could have communicated better with the appellant, that is in no doubt. Broad pressures, of whatever form, are not in and of themselves specific justification for unreasonable behaviour in individual circumstances.
11. Nevertheless, the appellant's attempts to contact the Council on the evidence before me were somewhat limited. A matter of days elapsed between the anticipated determination date and the appeal being made. I note that the PPG recommends engagement with the Council before proceeding to appeal against non-determination. Delays may, unfortunately occur, for whatever reason rather than by conscious design or of such significance so as to amount to demonstrably unreasonable behaviour.
12. I also accept that the Council's position in respect of the scheme was somewhat ambiguous, as detailed in the appeal decision. Nevertheless, in line with the Council's protocol set out above, the application would have needed to proceed to committee in light of representations made. There are evidently matters of planning dispute at hand, rather than the proposal being one which should clearly have been permitted (but simply was not because of unreasonable delay).
13. Moreover, the Council's case at appeal is supported by accurate observations of the appeal site, its surroundings, and the nature of the proposal. Whilst the appellant, and I, am of a different overall view regarding the merits of the scheme, that is not to say that the Council's opposition to it was not without firm basis. Therefore, whilst I accept the appellant's frustration with the process hitherto, on the balance of the evidence before me no action or inaction taken by the Council in this instance is such that it amounts to unreasonable behaviour resulting in unnecessary or wasted expense at appeal. Ultimately there was a legitimate planning dispute, as resolved by the associated appeal decision.

Conclusion

14. Overall, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

J Symmons

INSPECTOR