The Planning Inspectorate

Costs Decision

Site visit made on 27 September 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Costs application in relation to Appeal Ref: APP/W1850/X/22/3295616
Redwood Orchard, St. Michaels, Tenbury Wells, Worcestershire WR15 8TL

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Ms Brigid Eakins for a full award of costs against Herefordshire 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 a certificate of lawful use or development for the siting of a caravan for use ancillary to the lawful agricultural use of the Land.

Decision

1. The application for an award of costs is allowed in the terms 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. Awards against a party may be either procedural or substantive. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by failing to determine planning applications.

3. Where the local planning authority (LPA) has failed to determine an application within the time limits, the PPG advises it 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. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

4. The main thrust of the applicant's costs claim is that the Council's reasons it would have refused the application had been able to do so, were unjustifiable and unreasonable. The Council points out that it did not make a decision, however, its failure to issue a decision within the prescribed period has resulted in a deemed refusal.

5. In response to the Council's costs response, the applicant also raises issue with the Council's failure to determine the application and that it did not ask for an extension of time in dealing with the application. The Council advise that had the costs claim cited unreasonable delay, its response would have been the attempts to clarify the application in the light of previous similar applications. The Council has provided me with a copy of its correspondence with the agent,

seeking to try to understand what was being applied for. I am therefore satisfied that the Council has responded to this matter through the appeal.

6. The application is dated 16 December 2021 and a receipt from the Planning Portal shows that the application and fee were submitted and paid on the same day. Once an LPA has received a valid LDC application, they must give the applicant written notice of their decision: within 8 weeks beginning with the day after the date on which the application received; or within any extended period that may have been agreed in writing between the application and the LPA[1]. There is no suggestion that the application was not valid.

7. On 7 February 2022, over 7 weeks after the application was initially submitted, an officer of the Council wrote to the appellant raising concern that the application appears to be the same as an application for which the Council had recently issued a certificate. The applicant's agent wrote back the same day, seeking to differentiate between the two applications. Over a week later, the officer wrote back to the applicant querying the implications of the documentation submitted.

8. On 28 February, over 10 weeks after the application had been submitted, the officer wrote back to the applicant raising further concerns regarding the inclusion of the brochure. On 1 March 2022 the applicant's agent wrote back to the Council had advised that the brochure was submitted for illustrative purposes only and did not form part of the application for which a Certificate is sought. No determination was made and the appeal was dated 7 March 2022, over 11 weeks after the application was submitted.

9. While there remained ambiguity regarding the proposal at the appeal stage, which I sought to resolve by going back to the applicant, the Council should have raised its concerns earlier in the determination process. I agree it is not unreasonable to seek to clarify matters concerning the application, however, given the time limits for dealing with such an application, waiting over 7 weeks to raise initial concerns was unreasonable.

10. Had the Council raised its concerns earlier on in the process, there may well have been time for any ambiguity to be resolved and a determination made. Furthermore, it appears the Council did not request an extension of time to deal with the application. This meant the appellant had no certainty as to when a determination would have been made. This, in my view, is unreasonable.

11. As can be seen from my appeal decision, I have found that the proposal would be lawful and have allowed the appeal. Had the Council dealt with the application in a timely way and sought to resolve any ambiguity regarding the proposal earlier in the process, it is highly likely that the appeal could have been avoided altogether, particularly given the Council's decision in respect of LDC reference 213552, which was for a similar proposal. 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.

Conclusion

12. 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,

[1] The Town and Country Planning (Development Management Procedure)(England) Order 2015

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Herefordshire Council shall pay Ms Brigid Eakins, 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. The applicant is now invited to submit to Herefordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Savage

INSPECTOR