



Costs Decision

Site visit made on 20 September 2022

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Costs application in relation to Appeal Ref: APP/P2365/W/22/3295103 Primrose Hill Nurseries, Garden Centre and Equestrian Store, Asmall Lane, Scarisbrick, L40 8JL

- 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 Primrose Hill Nurseries Ltd for a full award of costs against West Lancashire 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 change of use from storage building to residential.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Applications for costs should clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The applicant is seeking to recover the costs incurred in the appeal on grounds that the Council behaved unreasonably by failing to determine the planning application within the statutory time period and by not engaging proactively.
4. In cases where the Council fails to determine the planning application, the PPG states that if it is clear that the authority will fail to determine an application within the time limits, it should give the applicant a proper explanation.
5. The Council acknowledged receipt of the application on 16 December 2021, when it also advised that an extension of time might be necessary due to delays caused by the coronavirus pandemic and a high volume of application submissions and communications. It stated that if the decision had not been made by 9 February 2022, the applicant would then have a 6 month period within which to appeal against non-determination.
6. The applicant requested an update on progress several times during January and February 2022. In late February, after the statutory time limit had passed, the Council responded. It apologised for the delay which it attributed to outstanding consultation responses and it requested an extension of time until 11 March 2022. In reply, the applicant acknowledged that the Council was

overstretched and indicated he would be agreeable to an extension if all matters other than consultee responses were acceptable. However, the Council was unable to give an indicative view as to the acceptability of the proposal before all consultees had responded. The appeal was subsequently made before the outstanding consultation responses were received.

7. The applicant is understandably frustrated by the delay in the processing of the application, the time it took the Council to respond to emails, and the lack of proactive engagement by the Council. However, while the Council did not request an extension of time before the statutory time limit expired, it had advised at the outset that it was experiencing a high demand for its services. Moreover, its website, which the applicant visited on a number of occasions, was advising applicants of likely delays in processing of applications.
8. The Council could have taken a more proactive approach to communicating with the applicant in relation to the delay and it could have responded in a more timely manner to his emails. Nevertheless, the applicant was aware of the likelihood of a delay and he understood the reason for the Council's delays in responding to his emails and in determining the application.
9. The Council states that if it had been in a position to determine the application, it would have refused it. As can be seen from my appeal decision, I also found conflict with the development plan and I dismissed the appeal. Therefore, the Council's behaviour did not delay development that should clearly have been permitted in accordance with the development plan nor did it result in an appeal that could have been avoided.

Conclusion

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated.
11. For this reason, an award of costs is not justified.

Sarah Manchester

INSPECTOR