
Costs Decision

Site visit made on 29 November 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2023

**Costs application in relation to Appeal Ref: APP/J0405/X/21/3287617
Three Corners Piece, Granborough Road, North Marston, Buckinghamshire
MK18 3PP**

- 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 Mr and Mrs Simon Loft for a full award of costs against Buckinghamshire 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 described as: conversion of part of former stable block for use as a single dwellinghouse (Use Class C3) as shown edged blue on the Ground Plan (existing) and Roof Plan (existing), together with ancillary residential use of outside hardstanding area; Equestrian use of manege and fields: Shared residential and equestrian use of the remainder of the site edged red on the site plan, including site entrance and turning area, and gravel strip separating fields from hardstanding area.
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Decision

1. The application for an award of costs is allowed in the terms set out 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.
3. The appellants contend that a full award of costs is justified for the costs it has incurred in making this appeal. They believe that the Council acted unreasonably by failing to determine the application for a Certificate of Lawful Use or Development (LDC). The Council did not determine the application in an expeditious manner and communication with the appellants fell below the standard reasonably expected. Furthermore, on the strength of the factual evidence presented the appellants assert that there was no reasonable basis for withholding the grant of a certificate.
4. The PPG¹ sets out circumstances in which a local planning authority's (LPA) handling of a planning application or enforcement notice prior to the appeal might lead to an award of costs. It advises 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. Furthermore, in any appeal against non-

¹ PPG, Paragraph: 048 Reference ID: 16-048-20140306.

determination, the LPA should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal is allowed, the LPA maybe at risk of an award of costs if 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.

5. The appellants' application was dated 15 March 2021 and the LPA acknowledge that the statutory deadline for its determination was 26 May 2021. During that period the LPA did contact the appellants to say they had attempted a site visit and would it be possible to provide pictures². The appellants responded swiftly to say that site access would always be available and confirmed that they had been submitted photographs as part of the original application.
6. Despite further requests for updates the LPA did not contact the appellants again until 4 July 2021 when they advised that they were experiencing delays in making decisions due to resources. After further correspondence the LPA advised that they thought they had all the information they needed to come to a decision³. Following a further two prompts the LPA responded on the 1 September to apologise for the delay. There was no further communication with the appellants, including no response to their email dated 8 November 2021, where the appellants advised that with the deadline for an appeal imminent, they would need to appeal unless a positive decision was made within the next 7 days. The appeal was submitted on 23 November 2021.
7. In response to the application for costs, the LPA acknowledge that they did not determine the application within the statutory deadline and nor did they agree a revised timescale for determination. They also advise that the delay was due to a high volume of planning applications and a high number of vacancies within the Department. This was communicated to the appellants during the application process.
8. I fully appreciate that Councils have been experiencing a backlog and high volumes of planning applications, in particular because of the COVID-19 pandemic. This is unfortunate and I recognise that resources have been stretched. However, in this case not only did the Council fail to make a decision within the statutory time period, but the appellants did not make their appeal until they had no other avenue available to them, some six months later. Thus, the LPA had a significant period of grace when they could have agreed a revised timetable or made their decision. Communication with the appellants during this time was below what could reasonably be expected, with the appellants having to repeatedly chase a response.
9. Furthermore, although the LPA responded to the appeal with a Statement of Case, this did not explain their reasons for not reaching a decision within the relevant time period. Moreover, although they highlighted some ambiguity in relation to the lawful use of the paddocks as shown on the application plan, they did not dispute the appellants' evidence and advised that had they been in a position to determine the application they would have granted a certificate of lawful use for the conversion of the stable block and its use as a single dwellinghouse, and for the equestrian use of the menage and fields.

² Email from LPA to Keystone Law, dated 11 May 2021.

³ Email from LPA to Keystone Law, dated 8 July 2021

10. It can be seen from my decision that the appeal was allowed and I granted a LDC. Although, as provided for by Section 191(4) of the Act, I modified the description of the use and operations granted from that which had been applied for, this was for clarification purposes rather than an absence of evidence. It is clear to me that it was unreasonable for the LPA not to have made a decision within the time period which they had available to them. The Council has a responsibility to allocate sufficient resources to ensure that they can carry out their statutory duties, and in this case better communication with the appellants during the application process and a determination of the application within the required timescale would have enabled the appeal to have been avoided. As such, the LPA acted unreasonably, and the appellants have incurred wasted time and costs in having to submit an appeal.

Conclusion

11. For the above reasons, I find that unreasonable behaviour by the Council resulting in unnecessary expense, as described in the Planning Practice Guide has been demonstrated and that a full award of costs is justified.

Costs Order

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, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Buckinghamshire Council shall pay to Mr and Mrs S Loft 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.
13. The applicants are now invited to submit to Buckinghamshire 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.

Elizabeth Pleasant

INSPECTOR