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## Costs Decision

Site visit made on 2 November 2022

**by C Dillon BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 January 2023**

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### **Costs application in relation to Appeal Ref: APP/V2723/W/21/3287312 Rose Villa Farm, Wells Lane, Barton, Richmondshire DL10 6LU**

- 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 Mr and Mrs Farrow for a full award of costs against Richmondshire District Council.
  - The appeal was against a failure to give notice within the prescribed period of a decision on an application for outline planning permission, with some matters reserved, for up to 50 dwellings and associated works.
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### **Decision**

1. The application for an award of costs is allowed in part within the terms set out below.

### **The submission by Mr and Mrs Farrow**

2. The applicants, Mr And Mrs Farrow, contend that their application for a full award of costs is justified as they believe Richmondshire District Council has behaved unreasonably. They allege that there have been delays and a lack of co-operation on the Council's part throughout the determination period which led to its failure to determine the planning application within the prescribed statutory timescale.
3. The applicants consider that this behaviour has directly led to an otherwise unavoidable appeal being lodged which has caused unnecessary expense to be incurred. These costs are associated with professional consultancy support for making their appeal against the Council's failure to issue its decision.

### **The response by Richmondshire District Council**

4. The Council considers that the applicants' case relies solely upon unsubstantiated procedural matters relevant only to the planning application process. Furthermore, the alleged lack of engagement is not accepted by the Council who maintains that any contact from the applicant appears to have been provided with a response. Furthermore, the Council states that the applicants were advised that the case had been reassigned to a newly appointed case officer who would review the case.
5. The Council maintains that the applicants were not forced into lodging the appeal against its non-determination of the planning application, arguing that they could have waited for a decision, which could have then been appealed if required. The Council also states that in line with National Planning Practice

Guidance ("the PPG") costs incurred by exercising the right to appeal should be absorbed by the appellant. The Council argues that there is no clear and comprehensive account of the nature and level of the costs incurred or how they differ from an appeal resulting from a refusal of planning permission.

6. For these reasons, the Council maintains that it has not behaved unreasonably and that the applicants have failed to demonstrate any unnecessary or wasted expense being incurred.

### **Reasons**

7. Irrespective of the outcome of an appeal, the PPG advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expenses in the appeal process. The PPG's list of behaviour which may be deemed unreasonable is not exhaustive.
8. Furthermore, the assessment of whether an award of costs is justified may take into consideration events before the appeal was brought, including behaviour or actions at the time of the planning application.
9. The PPG states that where it is clear that the local planning authority will fail to determine an application within the prescribed time limits, it should give a proper explanation to the applicant and also to any subsequent appeal.
10. The PPG also clearly states that if such an appeal is allowed, the local planning authority may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination and that better communication with the applicant would have enabled the appeal to be avoided altogether. 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 is cited as an example of unreasonable behaviour.
11. This appeal has arisen from the Council's failure to issue a decision. It is clear from the evidence before me that the Council failed to do this within the relevant prescribed statutory time period. Furthermore, there is no evidence to demonstrate that any formal extensions of time were sought or agreed.
12. This application for an award of costs has been made in a timely manner. The applicants have submitted copies of email communications between them and the Council. These provide clear evidence that the applicant endeavoured to establish a dialogue with the Council to progress the application and ensure that the necessary information was submitted to enable a decision to be reached. These emails also clearly demonstrate that from an early stage in the process the applicants consistently encountered difficulties in establishing and maintaining an effective line of communication with the case officer to bring their planning application to a conclusion within a reasonable timeframe, whatever the outcome.
13. The Council has not adequately substantiated their counter view with any such evidence to refute the applicants' allegations. Although there is evidence that some responses were provided, these did not constructively move the case on for the applicants despite the already protracted timescale that had elapsed.
14. I recognise that the Council had requested further information regarding surface

water matters and that may well have expended some additional time. However, such a request is not extraordinary and, although it is not clear when that request was made, it was acted upon by the applicants. Moreover, there was a significant and unexplained delay between that information being submitted and it being acted upon by the Council. That further exacerbated an already protracted determination period.

15. The matters relating to nutrient neutrality did not contribute to that delay as they were not relevant prior to the appeal being lodged. Neither did the Council cite any outstanding technical matters as putative reasons for refusal. There is no evidence which confirms that any further significant delays were down to the applicants inaction.
16. The evidence before me confirms that there was a turn-over within the planning team. However, this was in the latter part of the period within which the application was being determined. The stated pressure on the Council's staffing resources which may well have contributed to the failure of the Council to fulfil the obligation to make a decision is regrettable. However, no proper explanation for the significant delay experienced by the applicants has been provided by the Council.
17. This has been compounded by the Council's poor level of communication throughout, up until just before the appeal was lodged. Indeed, the Council's rebuttal to the applicants' application for costs lacks any sense of accountability for the delays and poor communication prior to the appeal being lodged and which ultimately directly led to the applicant taking that action.
18. The appellant was entitled to exercise their right of appeal given the delay. One of the purposes of that right is to prevent the planning process from being frustrated by undue delay on any local planning authority's part. The incoming case officer's intention to review the case is acknowledged, but it must be set against the already protracted determination period and the looming right of appeal deadline. Significantly, the applicants deferred lodging their appeal until the latest possible time and, to do otherwise, would have meant relinquishing that statutory right on the grounds of non-determination.
19. In summary, the applicants' submitted chronology of the events surrounding the appeal proposal demonstrates that this particular appeal arose from ongoing delay and associated uncertainties manifesting from clear deficiencies in the Council's communication and timeliness. Crucially, I have been able to reach a decision based on the information put before me. Therefore, no substantive reasons have been demonstrated by the Council which justify the very protracted delay in its determination which ultimately led directly to this particular appeal being lodged. Therefore, the Council did behave unreasonably.
20. Moreover, I have concurred with the applicants on all matters disputed by the Council during this appeal and concluded that there is no justified basis to reach a decision to withhold outline planning permission for the appeal scheme. This entire appeal could have been avoided had the Council exercised better communication and timeliness.
21. Whether similar appeal costs would have been incurred by the applicants had the Council issued its formal decision is irrelevant to my assessment of this particular application for an award of costs. This is because it would have

related to an appeal on different grounds and circumstances.

22. This unreasonable behaviour has directly led to both unnecessary and wasted expense in preparing and undertaking this particular appeal which is capable of being both identified and quantified. As the matters relating to nutrient neutrality arose well after the appeal was lodged the Council should not however be held accountable for any expense in addressing that matter or in the preparation of the necessary submitted legal agreements.

### **Conclusion**

23. For the reasons given above, I find that there was no substantiated, justifiable reason to delay the determination of the applicants' planning application. Furthermore, I have found no reason to withhold this particular outline planning permission. Therefore, unreasonable behaviour from the Council on procedural grounds, as described in the PPG, is evident. Crucially, the applicants have incurred unnecessary and wasted expense in terms of the preparation and submission of the particular appeal through an appointed agent.

24. Therefore, a partial award of costs which is confined to those associated with the written appeal submissions as set out in the Decision letter for this appeal, with the exception of nutrient neutrality and planning obligation matters, is justified in this instance.

### **Costs Order**

25. 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 Richmondshire District Council shall pay to Mr and Mrs Farrow, the costs of the appeal proceedings described in the heading of this decision, with the exception of nutrient neutrality and planning obligation matters; such costs are to be assessed in the Senior Courts Costs Office if not agreed.

26. Mr and Mrs Farrow are now invited to submit to Richmondshire District 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.

*C Dillon*

INSPECTOR