



Costs Decision

Site visit made on 13 February 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Costs application in relation to Appeal Ref: APP/R0660/W/22/3304413 Wheelock Heath Farm, Alsager Road, Winterley CW11 4RQ

- 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 Richard Lowe for a full award of costs against Cheshire East Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for the construction of new offices without complying with condition 3, attached to planning permission Ref 14/3035N.
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Decision

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

Reasons

2. The application for an award of costs will be familiar to both parties. Consequently, I shall not repeat the submission in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks an award of costs on the basis that they have incurred significant additional costs resulting from the excessive delay in processing the planning application. They state that build costs have risen dramatically, and a loss of rental income has also been incurred by the applicant.
4. The Council state they are currently dealing with a large back log of applications, and given the high workloads and lack of resources meant that it was not possible to meet the planning application deadline. They also highlight that the application was never capable of being considered (as it seeks to change the description of development and goes above and beyond the consented application) and the application was not subject to pre-application discussions.
5. In response, the applicant highlight that the scheme relates to a non-determination appeal and the Council failed to comply with the appeal timetable. Furthermore, to date, they have seen little or no evidence of endeavours to introduce efficiencies to reduce the backlog. They also assert that other applications submitted more recently have been evaluated and

decided. The applicant has drawn my attention to paragraph 38 of the Framework in relation to working proactively. In addition, they consider that the Council are ignoring paragraph 39 of the Framework as they are currently not accepting pre-application enquiries for smaller schemes. They state that it is unreasonable for the Council to take 18 months to claim the application is outside the remit of the section 73 process.

6. I fully appreciate the applicant's frustrations in the length of time it has taken to get to this position as well as other planning applications being decided more quickly. It also appears that pre-application discussions would not have been an option. On the other hand, I recognise that the Council is struggling with a back log, high workloads and lack of resources.
7. The applicant's case (set out in the statement of case) does not set out how the offices have been marketed. It suggests that there has been interest in stand-alone office space, albeit more interest for the combined uses sought. The application also only related to the use of the building. Therefore, no clear reasons (such as the office use being unviable) have been provided to demonstrate that the delay in processing the planning application has prevented the applicant from constructing the buildings granted planning permission.
8. Having regard to paragraph 48 of the PPG, the Council has explained 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. As set out in my decision, I have dismissed the appeal as I consider that the Council's objections are justified.
9. Therefore, I do not consider that the Council's failure to determine the application within the time limits amounts to unreasonable behaviour which has directly caused the appellant to incur unnecessary or wasted expense in the appeal process. Similarly, my dismissal of the appeal means that the Council's behaviour has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
10. For the reasons set out above I conclude that, the applicant has not shown that the Council has behaved unreasonably and that no wasted or unnecessary expense has been incurred by the applicant in the appeal process. I conclude therefore, that the application for an award of costs is refused.

L Wilson

INSPECTOR