
Costs Decision

Site visit made on 16 November 2022

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2023

Costs application in relation to Appeal Ref: APP/J1915/W/22/3302750 Highfield Nursery, Wellpond Green, Standon, Ware SG11 1NL

- 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 Barry Pestell for a full award of costs against East Hertfordshire District 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 planning permission for is demolition of four agricultural buildings and erection of two detached four bedroom dwellings with integrated garages.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises that 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 process.
3. The appellant's application is for a full award of costs on the following grounds:
 - Failure of the Council to engage with the applicant during the application and appeal process, and
 - The officer's report failed to accord appropriate weight to the 'fallback' position and provide clear reasons for the putative reasons for refusal.
4. The Council has not responded to this application.

Findings

5. The Council failed to fully engage with the applicant by updating them on progress of the application and seeking an extension of time beyond the statutory period for its determination. This was despite the applicant regularly contacting the case officer.
6. The decision to lodge an appeal was the applicants. Given they initiated the process it was unreasonable for the appellant to expect the Council to provide putative officer level comments on the anticipated reasons for refusal at this stage. I understand that the officer's delegated report was the first opportunity for the appellant to see them.

7. Given that the appellant Statement of Case addressed each of the Council's putative reasons I find that there is no evidence that the Council behaved unreasonably in this regard. Unnecessary expense does not appear to have been incurred other than phone calls.
8. The officer's report includes references to the permission granted for the Prior Approval scheme. This includes comparison of the size and layout with the appeal scheme. The officer did not give insufficient weight to the 'fallback position' but instead arrived at different conclusions from those of the applicant on the relative merits of the two schemes.
9. Whilst an appeal decision was referred to by the Council with regard to the second putative reason, I regard this as being used to inform comparison between the sustainability of that site's location with the appeal scheme given their proximity. Reference to the fallback position to distinguish the two sites was not required for this reason.
10. The third reason for refusal would not have been affected by the 'fall back' position given that the scheme involved a new form of development.

Conclusions

11. During the management of the application the Council has not demonstrated the standards which applicants would normally expect in their communication with the applicant.
12. With regard to the 'fall back' position I find that this was appropriately referenced in the officer's report.
13. Whilst the Council did not adhere to appropriate standards in some instances, I do not find that these resulted in unnecessary or wasted expense, as described in the Guidance.

Stephen Wilkinson

INSPECTOR