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## Costs Decision

Hearing held on 9 March 2023

Site visit made on 13 March 2023

**by Graham Chamberlain BA (Hons) MSc MRTPI**

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

**Decision date: 22<sup>nd</sup> March 2023**

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### **Costs application in relation to Appeal Ref: APP/Q3115/W/22/3296061 Land to the north of Moreton Road, Moreton, 469550, 204745**

- 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 Lucy Developments for a full or partial award of costs against South Oxfordshire District Council.
  - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for 'the erection of five dwellings alongside a new access, landscaping and other associated works'.
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### **Decision**

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

### **Reasons**

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG)<sup>1</sup> states that an award of costs may only be made against a party who has behaved unreasonably; *and* the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. I therefore share the view of the Council that due to the use of the word 'and', both circumstances must have occurred for an award of costs to be made. This approach is further supported in the PPG, which states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense<sup>2</sup>.
3. The PPG also states<sup>3</sup> that in a situation where the appeal has followed the Council's failure to issue a decision, and the appeal is allowed, then the local planning authority may be at risk of an award of costs. The particular circumstances referred to are when there were no substantive reasons to justify delaying the determination of the application, and better communication with the applicant would have enabled the appeal to be avoided altogether.
4. In this case the Council failed to decide the planning application in time. The applicant submits that this was principally down to the Council failing to formally consult the Conservation Officer upon validating the planning application, and then there being a lengthy delay in that response. Indeed, the response was submitted about a week after the application should have been determined. This is an excessive length of time.

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<sup>1</sup> Paragraph: 030 Reference ID: 16-030-20140306

<sup>2</sup> Paragraph: 032 Reference ID: 16-032-20140306

<sup>3</sup> Paragraph: 048 Reference ID: 16-048-20140306

5. That said, it is likely that upon receipt of the Conservation Officer's comments the Council would have moved promptly to a decision, which would probably have been a refusal. The applicant submitted their non-determination appeal quickly after reviewing the Conservation Officer's comments. As a result, the ultimate delay was not that great, as an appeal would have likely been made in March 2022 or thereabouts even if the Conservation Officer had submitted comments in time.
6. The Council's concerns are of substance for the reasons set out in my appeal decision. They were also articulated to the applicant at a pre application stage and during the Council's assessment of the application. As a result, it is highly unlikely that the appeal could have been avoided altogether with better/further communication. Indeed, as the Council's concerns were of substance and have resulted in the appeal being dismissed, it is not the case that the long time it took the Conservation Officer to respond to the consultation delayed an application that should clearly have been allowed.
7. As the applicant would have likely ended up at appeal regardless of whether the application was determined in time, and because the Council's concerns are of substance, the applicant has not been put to any unnecessary or wasted expense in submitting an appeal.
8. The applicant addressed the effect of the proposal on the setting of Chestnut Farmhouse due to this property being mentioned in the Conservation Officer's comments. However, this was not wasted expense because the matter was dealt with briefly, was not a concern of the Council and was something that should be addressed as a matter of good practice in any event given that the building is a non-designated heritage asset.
9. The applicant submits that they had to cover all issues in their appeal statement because they were unclear what the Council's concerns were, and this resulted in wasted expense. However, when appealing against the non-determination of a planning application, the assessment passes to an Inspector. They are likely to require a summary of all pertinent issues to identify the main ones. Moreover, much of the information would have been in the documents submitted to support the planning application. For these reasons, there was no wasted expense in preparing an appeal statement.
10. In any event, the Council had given unsupportive pre application advice after reviewing the scheme and had provided feedback during the application to which the applicant had responded. It seems to me that the applicant was generally aware of the Council's reservations and the very high probability that the application would ultimately be refused and the reasons why. They were also aware of the reasons why a decision had not been issued, this being the lack of response from the Conservation Officer. As a result, they were able to focus on the main issues in their appeal statement.
11. In conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. The application for costs is therefore refused.

*Graham Chamberlain*  
INSPECTOR