
Costs Decision

Site visit made on 21 February 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 April 2023

Costs application in relation to Appeal Ref: APP/B2355/W/22/3297146 Land at Clover Hill, Off Todmorden Road, Bacup

- 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 Rossendale Borough Council for a full award of costs against Mr/Mrs S and W Middleton.
 - The appeal was against the refusal of planning permission for a dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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. It goes on to state that an appellant is at risk of an award of costs if they have behaved unreasonably in relation to completing the appeal process (procedural) or the planning merits of the appeal (substantive). The applicant's cost claim is made on the basis that the appellant failed to engage with regard to the provision of additional arboricultural information, and the agreement of an extension of time.
4. The PPG provides examples of unreasonable behaviour which may result in an award of costs. These include but are not limited to, a lack of co-operation with the other party in providing information or discussing the application, delay in providing information or other failure to adhere to deadlines or only supplying relevant information at appeal when it was requested, but not provided, at the application stage.
5. The applicant contends that the appellant's failure to submit additional information with regard to protected trees during the application process has caused unnecessary and wasted expense in the preparation of statements and rebuttals to the subsequent appeal and appellant's costs application.
6. The applicant considers that the planning decision had been made on 8 March 2022, the day before the appellant emailed to confirm that an arboricultural report had been commissioned. However, a formal decision is not made until the day it is issued to the appellant, in this case on 10 March 2022. On receipt of the appellant's email, the applicant therefore had the option of not

- proceeding to issue the decision and making a further attempt to secure an agreement to an extension of time.
7. Although it may not have prevented an appeal, the application having been refused on other grounds, it could have potentially enabled this matter to be explored further and/or resolved. The appellant's agreement to provide the requested arboricultural report could have come earlier in the application process, but it was nevertheless made prior to formal determination. The failure of the appellant to agree an extension of time undoubtedly contributed to the determination of the application. A different outcome may have occurred had one been agreed. Nonetheless, there was no obligation on the appellant to agree to such a request, although it would have been beneficial and proactive to do so.
 8. I am referred to a recent costs decision reference APP/B2355/W/21/3282615 which the applicant considers is of relevance. In that decision, whilst similarly an extension of time had not been agreed, no engagement or response had been made to the Council's request for additional information prior to determination. This differs to the circumstances of the costs application before me where the appellant did offer to provide some additional information, albeit very late in the process and beyond the deadlines that had been set by the applicant.
 9. There is no evidence before me that the appellant failed to engage with or ignored the applicant with regard to the issue of site coverage, which led to the second reason for refusal. The appellant discussed this matter in an email of 2 March 2022 and although it was not explicitly clear what their position was, the matter remained unresolved at the point of determination. It may have been preferable to reduce the area of hardstanding around the proposed buildings but there was no policy requirement to do so. Furthermore, in my decision I have found that the amount of site coverage would not be excessive, or harmful to the character and appearance of the area.
 10. It is clear that there is a disagreement between the parties in respect of the planning merits of this aspect of the proposal. This does not amount to unreasonable behaviour that has resulted in unnecessary costs at appeal, particularly given that the applicant is likely to have refused the application regardless.
 11. The applicant's dissatisfaction at the appellant's lack of response to the repeated requests for an extension of time is understood. However, it has not been demonstrated that the appellant's behaviour was unreasonable and that it led directly to unnecessary or wasted expense at appeal. Consequently, an award of costs is not justified.

M Clowes

INSPECTOR