The Planning Inspectorate

Costs Decision

Site visit made on 30 May 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2023

Costs application in relation to Appeal Ref: APP/V2635/W/22/3304312
Queens Head, 33 Gaultree Square, Emneth, Wisbech PE14 8DA

- 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 Skeels for a full award of costs against King's Lynn and West Norfolk Borough 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 a single storey extension to accommodate Tea Rooms.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that 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. A Council would be vulnerable to costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

3. The substantive costs application alleges that the Council did not challenge the advice of the Highway Authority on how it constituted a 'severe risk' to highway safety and failed to issue a planning decision for two months, following its declaration that it would do so.

Highway comments

4. The Highway Authority (HA) provided advice twice on the planning application. In its first response [12 May 2022], the HA commented that the proposal would include inadequate on-site parking and would likely lead to an increase of on street parking to the detriment of highway safety. The second response [24 May 2022] deals with the planning officer's question about the additional parking demand caused by the proposed extension and the village hall car park.

5. The National Planning Policy Framework (the Framework), at paragraph 111, states that "development should only be prevented or refused on highway safety grounds if there would be an unacceptable risk to highway safety, or the residual cumulative impacts on the road network would be severe". As such, the Framework provides two scenarios where development should be refused on matters of highway safety. The Highway Authority found the proposal to

result in a risk to highway safety and therefore considerations of whether or not it would cause a 'severe risk' was unnecessary. Therefore, whilst the Council has demonstrated that it queried the initial HA comments it did not, and did not need to, question matters of 'severity'. This absence of challenge therefore does not demonstrate unreasonable behaviour.

Failure to determine the application

6. The planning application was registered 20 April 2022. The Council informed the Appellants, on the 23 May, that it intended to refuse the scheme. However, it failed to make a decision within the statutory timeframe, of the 15 June, or by 1 August when the Appellant decided to appeal against non-determination.

7. Despite statutory targets, Councils do not determine all planning applications within set timeframes. Whilst appealing should be considered as a last resort, an appeal against non determination provides Applicants with an avenue to seek alternative resolution. Therefore, the fact that the decision was not made expeditiously does not necessarily amount to unreasonable behaviour provided that the Council behaved in a proactive manner as sought by the PPG. In this case, the Council sought further details from the Applicant [13 May] and kept them informed of progress on the application [23 May]. The Council therefore maintained contact with the Applicant in a timely fashion. Consequently, whilst it is unfortunate that the Council then failed to make a decision within its initial time scale, or its stated extended period, this action would not amount to unreasonable behaviour.

Conclusion

8. The Council has not behaved unreasonably with respect to the first or second matter. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Ben Plenty

INSPECTOR