



Costs Decision

Site visit made on 9 May 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Costs application in relation to Appeal Ref: APP/L2250/W/22/3311083 Boyke Bungalow, Boyke Lane, Rhodes Minnis CT4 6XN

- 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 Paul Williams for a full award of costs against Folkestone and Hythe 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 a replacement dwelling.
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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 (the Guidance) 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.
3. The applicant has made an application for costs. It is assumed that this is for a full award. I have taken into account the final comments, and other comments that have been made during the appeal process, as contributing to the costs application.
4. The applicant argues that there has been a series of inaccuracies and omissions in the various reports and documents. This includes the comment in the planning report and appeal statement of case that the Council has taken a positive and proactive approach to the development and that officers had attempted to resolve concerns by engaging with the applicant and their agent with regard to amendments to the scheme. The applicant believes that this is a complete fabrication as at no point did the Council attempt to work with the applicant nor his agent, and never informed them of any concerns, nor request any amendments. The applicant makes the case that there have been delays in the process with the Council not engaging and the applicant has had to make his own judgement as to how to amend the application in the light of representations and only as a last resort was an appeal against non-determination submitted.
5. The applicant queries some of the descriptions in the Planning Report concerning the site and area, which are argued to be inaccurate. This includes comments on the height of properties in the locality and the character of the surroundings. The applicant also raises concerns regarding the nature and accuracy of comments from Elham Parish Council.

6. The applicant explains that he has had to instruct his architect to redraw the plans to reflect Building Regulation changes whilst waiting for the Council to make a decision and this would not have been necessary if a timely decision had been made. Throughout the process it is argued that the Council has acted unreasonably. The applicant has listed his financial costs involved in the appeal and seeks that these be recovered.
7. The Council has had the opportunity to respond to the costs application, but no comments have been received.
8. The application form is dated 4 November 2021. However, the Council indicate in its appeal statement that the application was valid from 29 March 2022. An appeal against non-determination was submitted and the appeal questionnaire is dated 14 November 2022. It certainly seems that the Council did not process the application or engage with the applicant and his agent in any sustained or effective way throughout the time the application was before it. There is evidence that the Council updated the Parish Council to assist the Parish Council's understanding of the scheme. However, there is very little evidence, if any, available to demonstrate that the Council had explained to the applicant how the application was progressing, and it appears that there was no timetable to move the application to a decision when the appeal was submitted.
9. However, the Guidance explains that costs cannot be claimed for the period during the determination of the planning application. Furthermore, the Guidance sets out that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
10. Consequently, while I understand the concerns the applicant makes of the Council, these concerns are predominantly with its behaviour at the application stage. Comments on the lack of engagement, which are argued to be contrary to what the Council say in their appeal statement, are matters that are not directly connected with the appeal process.
11. Since the appeal was submitted, the Council has engaged satisfactorily in the process. In particular, it has set out the planning considerations it would have made had it still had jurisdiction and reported to the Planning Committee with a recommendation that the proposal would have been approved, if the appeal had not been submitted. The Planning Committee endorsed this recommendation and the Council did not seek to defend the appeal. The Planning Report, while criticised by the applicant in some details, nevertheless, was supportive of the proposal. This assisted the considerations at the appeal stage.
12. The redrawing of the plans to reflect forthcoming Building Regulations were at the applicant's risk and could have been wasted time and expense in the event that the appeal was dismissed. While these costs may reflect delay in the application process they are again not directly related to the appeal.
13. The concerns with the Parish Council and its representations have also not caused delay at the appeal stage and, in any case, cannot be attributed to the Council. Once the appeal against non-determination had been made, and I understand the reasons for making that appeal, the Council lost jurisdiction to

decide the proposal and the subsequent time for the appeal to be determined is not due to the Council's processes or officers.

14. I appreciate the frustrations of the applicant and note the delays and approach of the Council at the application stage. I have taken this into account in this decision. However, in terms of the appeal process the Council has not acted unreasonably when considered against the advice in the Guidance. Accordingly, the applicant was not put to unnecessary or wasted expense at the appeal stage.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs, either full or partial, is not justified.

David Wyborn

INSPECTOR