



Costs Decision

Site visit made on 18 May 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2023

Costs application in relation to Appeal Ref: APP/J3720/W/23/3314777 Woods Farm, Birmingham Road, Henley in Arden, Warwickshire B95 5QD

- 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 Geoff Gilbert of Woods Farm Christmas Trees for a full award of costs against Stratford-on-Avon 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 Construction of an agricultural building for use as a store for agricultural plant, machinery, vehicles, tools, Christmas trees and welfare facilities, and an access track thereto and landscaped mounding".
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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 (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. The applicant contends that the Council did not proactively engage in discussions to help find a more suitable location. In addition, the Council's delay in not making a timely decision has caused the applicant to appeal. Therefore, the allegation is that the Council has behaved unreasonably and caused the applicant unnecessary expense in having to appeal.
4. Costs can include the time spent preparing for an appeal and attending the event, and the use of consultants to provide detailed technical advice. Cost applications can also relate to events before the appeal. The PPG advises that Inspectors can take into account the behaviour and actions at the time of the planning application, when considering whether or not costs should be awarded.
5. The Council has submitted a costs decision¹ at Teddington that discusses the obligations for pre-application discussions and acceptance of amended plans. In its appeal statement the Council also includes some key dates in the determination of the application.
6. The applicant had made a number of attempts to mitigate the development over a series of previous prior notification applications, including for different locations and reducing the size of the building. As the applications for the

¹ Appeal ref: APP/L5810/W/17/3191968 dated 4 June 2018

- building were made as Prior Notifications – and not planning applications – the reasons for refusal would not contain the same degree of detailed reasoning one would get from refusal of a planning application.
7. It would not be unreasonable therefore, in my view, for the applicant to seek pre-application advice from the Council before they submitted yet another application for a similar proposal. Indeed, the Framework encourages applicants to engage in pre-application discussions, although it is not mandatory on either party. The Council adopts a similar approach. In this case, the Council states that the applicant would have been best served by entering into paid pre-application advice prior to the submission of the application, indicating to me that the applicant did not.
 8. From the limited information before me I am led to understand that the applicant sought to engage with the Council on numerous occasions during the determination of the 'live' application both on site, on the telephone and in writing, but to no effect - I do not have full details of these attempts. There is no obligation on Councils to enter into negotiations during 'live' planning applications and the Council's website sets out guidance on this, encouraging pre-application discussion, unless changes are minor.
 9. From the submitted plans, the only additional submitted plan of note is a plan showing "Details of earth mound" (drawing number GM7(43)050). This annotated an already submitted unreferenced 'Proposed Plan and Elevations' with the written dimensions of the shown earth mound and included the natural ground profile. I understand the Council did not re-consult on this plan. As the plan did not show any substantial changes, such as the relocation of the building or any changes to its design or dimensions, I do not find the Council was unreasonable in taking this view.
 10. I therefore do not find the Council acted unreasonably with regards 'live' negotiations or any advice the applicant thought they should have received from the Council.
 11. The applicant refers to the Council misapplying itself in a previous [prior notification] application for not considering that planning permission had already been granted for a new access. This is not relevant to the appeal before me.
 12. With regards the issue of non-determination, the Council has set out some of the timescales of the application from its receipt in June 2022, its registration as valid in August and the deadline for reaching a decision as 13 October 2022. There are some email exchanges in July and August regarding the submission of location plans with red lines.
 13. On the 28 October 2022 the applicant wrote to the Council to enquire when a decision could be expected. From the applicant's letter it would appear the Council emailed the applicant on 12 October, the day before the application was due to expire, and the applicant left a voicemail message. I do not have the details of that email or details of the message.
 14. I have been provided with a Council email to the applicant dated 8 November 2022. In it the Council refers to the applicant's email (no date) and apologises for the delay in responding but provides no further explanation for the delay. The Council goes on to advise the applicant it would be refusing the application

under its delegated powers for “reasons of design and landscape harm by way of the siting of the building and impact of the access track”. The Council then gave the applicant another week until 14 November to either withdraw the application or have it refused.

15. From the evidence before me there is no explanation of why the Council missed the initial 8-week expiry deadline of 13 October 2022. Moreover, there is no satisfactory explanation as to why the Council did not then issue the refusal notice after the 14 November 2022 after telling the applicant it would be refusing the application. The appeal was lodged some 2 months later. In the absence of evidence to the contrary, I find the Council acted unreasonably in this regard.
16. As I find the Council has acted unreasonably regarding non-determination, I now need to consider whether this unreasonable behaviour has resulted in unnecessary or wasted expense on the part of the applicant. Both tests need to be satisfied before an award of costs can be made.
17. The applicant was advised in advance that the Council was going to refuse the planning application and was given a summary of the reasons why. I have found the proposed development would be unacceptable for the same reasons. The applicant chose not to withdraw the application, as suggested by the Council, indicating to me he was obviously prepared to contest the decision at appeal and incur the associated expense of doing so. Indeed, it is not unreasonable for a party to seek to resolve a reason(s) for refusal through the appeal process. I have not been provided with any subsequent correspondence leading up to the lodging of the appeal, if indeed there is any, to shed any further light on the matter. I am therefore of the view the appellant would have lodged an appeal in any event, together with the associated expense such action would incur.

Conclusion

18. I find the Council acted unreasonably in not determining the application within the initial timescale and again after it advised the applicant in November 2022 it would be refusing the application. However, I do not consider this caused the applicant to incur unnecessary or wasted expense as the appeal could only have been avoided if the applicant had withdrawn the application, which they chose not to do.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG and alleged by the appellant, has not been demonstrated. An award for costs is therefore not justified.

K. Stephens
INSPECTOR