



Costs Decision

Site visit made on 7 March 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Costs application in relation to Appeal Ref: APP/K2610/W/22/3293053 Land at Dawson's Lane, Blofield, Norfolk NR13 4SB

- 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 Green Acre Developments Ltd for a full award of costs against Broadland District Council.
- The appeal was against the failure of the Council to give notice within the prescribed period of a decision on an application for approval of details required by a condition of a planning permission.

Decision

1. The application 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.
3. The committee meeting minutes state in part:
'Reason for Deferral for 12 months to allow for all the houses and the road surface to be completed and for further testing to take place on the approved system. In reaching this decision members acknowledged that the requirement of condition 3 would not be met and no enforcement action would be taken and the houses could be occupied'
4. It was neither appropriate nor reasonable for the Council to defer the decision for such a long period of time. Indeed, if it was necessary for the development to be completed in order for the requirements of the condition to be met then that itself indicates that the condition was not drafted correctly, as it required the submission and approval of details prior to completion of the roof on the 'last property'. This is not the fault of the appellant and in such circumstances the Council should have recognised this. The Council should also have recognised that the completion of the development would result in a position whereby the condition could no longer be discharged.
5. The appellant subsequently completed the development despite the fact that the condition had not been discharged. In my view, this is understandable given the assurances given by the Council that no enforcement action would be taken. That is not to say that I endorse the Council's approach of offering such an assurance. To the contrary, for the reasons I have given, the Council should

have reached a decision on the application one way or the other, on the basis of the evidence before it.

6. Unfortunately for the appellant, the fact that the development has been completed means that condition 3 can no longer be discharged. As explained in the decision letter, the discharge of condition application process is not a vehicle which allows for a condition to be effectively modified (in this case through ignoring the specified timing clause). I understand the appellant's logic in seeking to regularise the permission through the appeal procedure, however this is not the correct approach. Taking a flexible approach in an instance such as this, would nullify the effect of timing clauses in planning conditions.
7. Regardless of whether or not the specific requirements of condition 3 - in terms of the information on surface water drainage - have been met, the appellant has not been put to unnecessary expense. This is because the appeal was always bound to fail from the moment that the development had been completed. As a result, the appeal was not the necessary vehicle by which to resolve the impasse between the main parties. There is no reason why the appellant should not have been aware of this.

Conclusion

8. Whilst the Council did act unreasonably for the reasons given above, this unreasonable behaviour did not result in unnecessary or wasted expense in the appeal process, as described in the PPG. As such, the application for an award of costs is refused.

Luke Simpson

INSPECTOR