
Costs Decision

Site visit made on 28 November 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2023

Costs application in relation to Appeal Ref: APP/C1625/W/22/3303797 The Grove, Church Road, Arlingham, Gloucester GL2 7JL

- 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 Thomas Jones for a full award of costs against Stroud 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 the change of use and extension to the existing brick barn to create a farm shop/café facility with new access, car parking, communal orchard and associated landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council behaved unreasonably on procedural grounds firstly, by not issuing a decision notice within the prescribed statutory time frame and secondly, by not working proactively with the applicant. In respect of the latter point, reference is made to a failure to take account of revised plans and additional reports submitted during the planning application.
4. PPG¹ lists examples of what type of behaviour may give rise to a procedural award against a local planning authority. It indicates that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. It goes on to cite delay in providing information or other failure to adhere to deadlines and lack of co-operation with the other party or parties as examples.
5. The PPG refers to compliance with the requirements and deadlines of the appeal process rather than the application process. It is not part of the applicant's case that the Council failed to adhere to appeal deadlines. Nevertheless, paragraph: 033 Reference ID: 16-033-20140306 confirms that behaviour and actions at the time of the planning application can be taken into

¹ Paragraph: 047 Reference ID: 16-047-20140306

account in the Inspector's consideration of whether or not costs should be awarded.

6. The Council explains that it was unable to make a formal decision within the requisite period as it was waiting for comments from the Highway Authority, a statutory consultee. I accept that these comments were relevant to the determination. There is evidence that the Council were initially reasonably diligent in pursuing the Highway Authority for a response² and reference is made to an apology from the Highway Authority for a lack of response dated 17 June 2022.
7. Even so, there was subsequent confusion as to whether comments dated 20 June 2022 were received by the Council from the Highway Authority. Nor is it fully explained why this was not clarified at an earlier point by further communication between the Council and Highway Authority. As such, this would not fully explain why the Council still had not made a determination by 25 July 2022 when the applicant submitted the appeal.
8. Neither is this the only incident of confusion regarding the content of the planning application file during the planning application. Whilst the Council did initially advise³ that they were not seeking any amended or further information, the email correspondence⁴ provided shows that the applicant specifically requested revisions to the plans to be considered and there were several occasions where additional supporting information was submitted. The Council did not respond to confirm that they were not prepared to accept the revisions and information. Consequently, it is understandable that the applicant felt frustrated that ultimately this was their position and hence, there is some basis to criticise the administrative prowess of the Council.
9. Nevertheless, the planning application in this case followed the withdrawal of an earlier development proposal at the site. Moreover, the Council engaged in pre-application advice with the applicant, which aligns with the early engagement generally advocated in the National Planning Policy Framework. Furthermore, the email from the Council dated 13.5.22 set out an intermediate position giving an indication of the likely outcome. To my mind these are not the actions of a Council that has failed to proactively engage with the applicant.
10. Neither am I aware that a Council is obliged by the Framework or otherwise to accept revised plans or additional information following the submission of a planning application.
11. Consequently, whilst there were some incidents of imperfect communication, I am not persuaded that the Council's actions amounted to unreasonable procedural behaviour within the meaning of the PPG.
12. Most significantly, the evidence does not demonstrate that had the Council acted otherwise by accepting the revised plans and information or by making a timely determination, then it would have permitted the proposal, thereby obviating the necessity of an appeal. The Council's statement of case confirms

² Email from Council to applicant dated 13.5.22; Paragraph 4.7, Council's Statement of Case

³ Email from Council to applicant dated 13.5.22

⁴ Emails from applicant dated 26.5.22, 7.6.22 and 14.6.22

that had it been in a position to make the decision it would have refused the proposal. Furthermore, it will be seen from my decision, that even taking account of the revised plans and additional reports, I found some of the concerns of the Council to be justified. Hence, it is not shown that the applicant was put to wasted expense by preparing for an unnecessary appeal.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. As such, the award of costs sought is not warranted.

Helen O'Connor

Inspector