



Costs Decision

Site visit made on 30 January 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

**Costs application in relation to Appeal Ref: APP/U1105/X/23/3330560
Land adjacent to Main Yard, Road to Stockshop, Lodge Trading Estate,
Devon, Broadclyst EX5 3BS**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Richard Holman of OPCD Ltd for a full award of costs against East Devon 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 a certificate of lawful use or development for continued use of storage/distribution (class B8).
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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 on Appeals 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. Whilst the costs applicant has submitted documents that relate to the cost of making his appeal, this is not accompanied by a statement in which he sets out the reasons why he considers the Council to have behaved unreasonably and that such behaviour has resulted in unnecessary or wasted expense in the appeal process.
4. Nevertheless, in his appeal submissions he has referred to the Council's failure to determine the application for a certificate of lawful use or development (LDC), that is the subject of the appeal. He also points to a lack of discussion with the Council in respect of the application.
5. The Council suggest that the evidence submitted with the LDC application replicates that submitted in respect of the previous application, reference 21/2740/CPE, which sought an LDC for the use of the appeal site and adjoining land for 'B8 storage and distribution with ancillary offices on site'. It is suggested that it was on the basis of this evidence that the Council granted an LDC for the land adjoining the appeal site, but not for the remainder of the land in question, which comprised the appeal site. For this reason, the Council say that there was no reason to discuss the application with the applicant. It says that 'the Council's position was clearly set out in writing, and their concerns were not addressed'.

6. In view of the above, I can agree with the applicant, that there is no justification for the Council's failure to determine the LDC application. The Council have, therefore, behaved unreasonably in this regard.
7. Notwithstanding this, the Council's position is clear, that it would have refused the LDC application, had the appeal not been made. Furthermore, the applicant has not suggested that he would not have made an appeal, had the Council refused the application. Accordingly, even if the Council had determined the LDC application, the appeal would not have been avoided. For this reason, I cannot conclude that the applicant has incurred unnecessary or wasted expense in the appeal process; there would have always been a need for him to make an appeal.
8. In addition to this, I have concluded that the deemed refusal of the application was well founded, finding that the use that is the subject of the LDC application was not lawful on the date the application was submitted. I have found the Council's case to have been robust in its defence of the deemed refusal and I have agreed with its reasons for taking this position. I cannot, therefore, find the Council to have behaved unreasonably in opposing the applicant's case.
9. Whilst the applicant points to a lack of communication on the part of the Council during the determination of the LDC application subject of the appeal, he does not point to any incidents of any requests being unanswered. Nevertheless, the Council acknowledge that there was a lack of engagement during the application process, for the reasons mentioned above.
10. Notwithstanding this, the Council's decision on the previous LDC application would have made clear the shortcomings of the applicant's evidence as it relates to the appeal site alone. The applicant would, therefore, have had some understanding of how he could have addressed this in his subsequent application. All things considered, I cannot find the Council to have behaved unreasonably with regard to their communication with the applicant during the application process.
11. To conclude, for the reasons given above, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR