



Costs Decision

Site visit made on 17 October 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2024

Costs application in relation to Appeal Ref: APP/Y2003/W/22/3313325 TLC Handling, Sandtoft Road, Epworth DN9 1LB

- 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 Lexgreen Services Ltd for a full award of costs against North Lincolnshire 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 erection of extensions to a warehouse without complying with a condition attached to planning permission Ref PA/2021/1854, dated 16th December 2021.
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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 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal. The applicant's claim for costs is made on the grounds that the Council were unreasonable in failing to determine the application despite it being valid, and falsely advising that there was no option other than to withdraw it from consideration.
4. The Council points out that it may decline to accept an application under section 73 of the Town and Country Planning Act 1990, if the actual or potential impact of varying the relevant condition would more properly be the subject of an entirely fresh application for full planning permission. Whilst this is correct, the Council validated rather than declined to accept the application.
5. During the determination of the application, the Council communicated with the applicant and gave advice as to how he could proceed with his proposal, including withdrawing the S73 application and submitting a full planning application. There is no substantive evidence before me to suggest that the Council was seeking to force the submission of a more expensive full application.
6. It is reasonable for an applicant to expect a decision to be made for a validated application. However, the Council was not clear as to how it dealt with the amended plan and was incorrect in advising that it could not determine the S73 planning application. If the proposal was considered to fall outside the scope of

a S73 application, the Council could have legitimately refused it. Whilst there is no evidence before me that the Council acted to deliberately frustrate the proper planning process, I find unreasonable behaviour by the Council with respect to the procedural handling of the application.

7. Clearly, there is a difference of opinion between the parties in respect of whether the proposal meets the scope of a S73 application. This is a complex issue as can be seen from the numerous judgements referenced in my decision on this subject. It is a matter of finely balanced appraisal. My decision indicates that the Council were right to be concerned about the extent to which the original proposal could be considered to fall within the scope of a S73 application, even though I did not share its position in relation to the amended plan.
8. The evidence indicates that had the Council sought to determine the application, it would have refused permission. Whether the application was not determined or refused, an appeal is likely to have followed anyway to resolve the dispute. Work in addressing the issue of what development would fall within the scope of a S73 application were therefore necessary to support the appeal submission overall, rather than as a consequence of unreasonable behaviour by the Council.

Conclusion

9. I acknowledge the applicant's evident frustration with his perception of the Council's approach. However, insofar as is relevant to this costs application, based on all of the evidence before me, whilst I have found unreasonable behaviour on the part of the Council, it has not resulted in unnecessary expense as described in the PPG, with regard to the procedural or substantive matters of the appeal. An award of costs is not therefore justified.

M Clowes

INSPECTOR