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## Costs Decision

Site visit made on 17 April 2024

**by Chris Preston BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 July 2024**

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### **Costs application in relation to Appeal Ref: APP/J2210/W/23/3323796 Land South of Marley Lane, Hoath CT3 4DT**

- 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 A & J Pace for a full award of costs against Canterbury City 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 planning permission for the installation of a digestate storage Ecobag with construction of bund.
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### **Decision**

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

### **Reasons**

2. The applicant's costs application, the Council's response and the applicant's final reply were all submitted in writing and the content will be familiar to the parties. As such I shall not repeat those details in full.
3. In short, the applicant seeks a full award of costs on the basis of the way the Council handled the application, including the delay in processing the application. More specifically reference is made to and what the applicant deemed to be unreasonable requests for further information from committee members and inaccurate reporting of matters in the committee reports, relating to highway matters and the distance from Clayhanger Hall.
4. The Council maintain that the delays, including the delay in committee members visiting the site were due to the timing of local elections which led to a change in the make up of the committee; that reference to the distance to neighbouring property did not lead to any misleading reporting of facts and that the highway comments were clearly reported. As such it contends that there was no unreasonable behaviour and no grounds for an award of costs.
5. Paragraph 048 of the Planning Practice Guidance in relation to costs states:

*If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.*

*If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.*

6. In this case the Council did take a significant amount of time to determine the appeal. However, for most of that time, the parties communicated and the applicant was happy to agree to extensions of time to allow for matters to be considered. The application did raise significant local interest and it was reasonable for members of the committee to undertake a site visit; it would have been strange had they decided not to. The timing of local elections was unfortunate in respect of the make-up of the committee but it was understandable and unavoidable that led to some delay.
7. On the substantive issues it was also reasonable for the committee to seek further information regarding highway matters and odour. In fact, it does highlight problems that can occur when an application is submitted retrospectively with the committee responding to local concerns and seeking information on matters that could and possibly should have been submitted with an application prior to development taking place.
8. In terms of traffic movements the spreading of digestate fertiliser clearly involves substantial movement of heavy traffic on rural lanes. Whilst planning permission is not required for farm vehicles involved in spreading to use local roads, it was reasonable for the Council to seek to understand the effect on traffic movements of locating the storage bag on the site, when compared to the alternative 'no storage' scenario. The Highway Technical Note was subsequently produced by the appellant but that did not fully address traffic movements for the reasons set out in my associated decision.
9. There is debate about the way comments of the Local Highway Authority were reported in the committee reports but I do not think that led to undue confusion and ultimately, the committee were justified in requesting further information in any regard.
10. The way the matter was reported in respective committee reports may have led to some confusion as to whether the site was within a 400m distance of the curtilage of a 'protected building' with one report saying it was "within" 400m and another saying it was "approximately 400m away". However, the issue of what amounts to 'curtilage' is not a straightforward matter and, in any event, that point did not have a significant bearing on my decision. Of itself, there is no evidence that the wording of the committee reports led to any additional unnecessary expense.
11. Overall, the Council did take a significant amount of time to process the application. However, the matters upon which further information was sought were important planning matters that were integral to the eventual decision and the Council was not unreasonable in seeking that information. Whilst the committee reports could have been clearer in some respects there is no evidence that led to the appellant to incur unnecessary expense. The need to seek information retrospectively was partly due to the fact that the development had already occurred without planning permission and the Council was seeking to understand the impact in respect of the concerns of interested parties.

12. The delays were also partly due to local elections which impacted on the planning committee and the appellant was happy to work with the Council in the early stages of that process, twice agreeing to an extension of time. Thus, it was not a situation where the Council failed to communicate with the applicant.
13. Eventually the appeal against non-determination was submitted and the Council subsequently, acknowledged that it would have granted planning permission had it been in a position to do so. However, that does not mean that the delay in reaching that point was unreasonable. The issues were finely balanced and I am satisfied that the way in which the Council handled the application was not unreasonable in the circumstances.
14. In the absence of any unreasonable behaviour it follows that there are no grounds for an award of costs and I shall dismiss the application.

*Chris Preston*

INSPECTOR