
Costs Decision

Hearing Held on 16 July 2024

Site visit made on 15 July 2024

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

**Costs application in relation to Appeal Ref: APP/C1950/W/23/3331454
Emmanuels Farm, Great North Road, Welwyn Garden City,
Hertfordshire AL8 7TA**

- 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 Millen Homes for a full award of costs against Welwyn Hatfield Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for: *'Outline Planning Application for a residential development of up to 20 affordable units, on land at Emmanuel's Farm, Great North Road, Stanborough, AL9 7TA. Access, layout and scale are for approval; landscaping and appearance are reserved matters.'*
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Decision

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

The submissions for Millen Homes

2. The Applicant indicated that:

'The Application for costs is submitted due to the councils failure to determine the application in a reasonable timeframe, failure to present the application at committee at the scheduled date and failure to respond to requests to determine the application.'

3. No further elucidation of the Applicant's case or further comments were provided at the Hearing despite having been afforded the opportunity to do so.

The response by Welwyn Hatfield Borough Council

4. The Council indicates in its response that the Applicant was refunded their fee as the Council did not determine the application within an appropriate timeframe.
5. Nonetheless, the Council indicates that the final recommendation would not have been to approve the application. The Council accepts that there has been shortcomings in how this application has been dealt with. However they do not consider that the appellant has been subject to unnecessary or wasted expense in the submission of this appeal. Therefore, it is requested that the application for costs against the Council is dismissed.

Reasons

6. The Planning Practice Guidance 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.
7. In this case, the limited reasons for the application for costs made by the Applicant do not provide any justification that demonstrates that the Council acted unreasonably at the Appeal stage.
8. Indeed, the Council appear to have refunded the application fee and undertaken a large amount of work related to this case and the appeal process. They provided timely and helpful responses during the appeal process – for example they provided information sought in the Pre-Hearing Note and Agenda document.
9. In contrast, the Applicant did not appear to even acknowledge receipt of this document until the Hearing some six weeks later. This caused delays at the Hearing meaning that valuable Hearing time was taken up trying to resolve and clarify matters which should have been resolved weeks before the event by the Applicant. This is one reason why Pre-Hearing Notes are sometimes issued prior to the event, in order to assist the smooth running of the event.
10. This matter was further compounded by the lack of the Applicant agreeing the Statement Of Common Ground (SOCG) before the Hearing opened, even though this matter was sought in the Pre-Hearing Note and the Council had agreed to the SOCG. Furthermore, the legal agreement under s106 TCPA dated February 2024 remained with errors in it, even though this matter was brought to the attention of the Applicant in the Pre-Hearing Note.
11. The behaviour of the Council during the appeal process, at the Hearing and prior to the event, was both professional and reasonable. The Applicant's agent also acted professionally in their capacity at the Hearing (having been appointed a week or so before the Hearing opened).
12. The problem principally lay in the limited engagement by the Applicant with myself as the appointed person and the Council before the Hearing opened; especially in terms of the Pre-Hearing Note.
13. Whilst recognising the frustration that the Applicant may have had at the application stage, for which the planning fee was refunded, I have not and did not see or hear any unreasonable behaviour by the Council at the Appeal stage – whether before or during the Hearing.
14. In the absence of unreasonable behaviour being demonstrated, the application for costs is refused.

C Parker

INSPECTOR