



Costs Decision

Site visit made on 13 August 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2024

Costs application in relation to Appeal Ref: APP/V1505/W/23/3334028 Hygro Farm, Kennel Lane, Billericay, Essex CM11 2SU

- 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 Blue Door Homes Ltd for a full award of costs against Basildon Borough 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 redevelopment of a site currently occupied by commercial barns to create 5 dwellings with associated parking and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. The applicant considers the Council has exhibited unreasonable behaviour that is procedural in nature. They state the Council failed to seek an extension of time for its decision, was not proactive in explaining the delay, and was either slow or failed altogether to respond to emails and/or upload submitted documents to the Council website. They argue the Council was ultimately satisfied with the final revised scheme so, had it provided updates and sought an extension of time in a timely fashion, the non-determination appeal could have been avoided. They further contend the decision notice issued after the appeal was made had no legal standing and included errors, which resulted in further unnecessary costs for legal advice about the status of the notice.
4. The Council state in response that, had the applicant sought pre-application advice, the issues that caused delays would have been addressed and a timescale for the processing of the planning application could have been agreed.
5. The PPG recognises that pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system. However, as the National Planning Policy Framework (the Framework) makes clear, a local planning authority cannot require a developer to engage with them before submitting a planning application. The PPG adds that the level of engagement at pre-application stage

needs to be proportionate to the nature and scale of the proposed development.

6. In this instance, the appeal site had extant permissions for a comparable type and scale of development. Consequently, some planning issues arising from the appeal scheme had recently been tested by the Council and/or at appeal, and a satisfactory resolution had been reached¹. For example, the Foul and Surface Water Drainage Report submitted with the application subject of this appeal was not materially different in its findings and recommendations to that submitted in support of one of the earlier schemes.
7. Moreover, there was confusion and resulting delay surrounding proposed land contamination conditions that the Council ultimately accepted were not necessary because of the planning history of the site. The fact that this matter was eventually resolved does not overcome the Council's failure fully to consider the clarifications provided by the applicant during the application. Pre-application engagement on this matter would not have been proportionate under the circumstances.
8. Consequently, whether or not pre-application engagement could have been beneficial to the processing of a relatively complex application, I find the applicant's decision not to follow this route does not in itself justify the delays that occurred. Nor does it justify the Council's failure to seek an extension of time in accordance with article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).
9. In addition, there was a delay of some two months between the applicant's submission of revised drawings on 9 August 2023 in response to initial Urban Design comments and a subsequent request for further Urban Design revisions sent by the Council in early October. On the evidence before me, the Council did not acknowledge receipt of the further revisions submitted by the applicant on 30 October or reply to the applicant's follow-up emails dated 1 and 7 November 2023. Further attempts by the applicant during November to find out whether comments on the revised drawings had been provided yielded little information. The next communication before me from the planning case officer to the applicant was on 29 November, thanking them for the revisions and stating further comments from internal consultees would be sought.
10. I find these delays and shortcomings in communication by the Council to be unreasonable and the applicant's decision to appeal non-determination on 28 November entirely reasonable under the circumstances. Notwithstanding that the Council was eventually minded to grant planning permission for the scheme, its behaviour caused the applicant to incur unnecessary and wasted expense in the appeal process.
11. Following a meeting with a manager, the applicant decided not to withdraw the appeal, which it was entitled to do. The Council nevertheless issued a decision notice on 12 December 2023, although it should have been aware that jurisdiction for deciding the application passed to the Secretary of State when the appeal was made. This further unreasonable behaviour on the Council's part was compounded by a failure to list in condition 2 drawing nos 23.8006.102 Rev F and 23.8006.103 Rev F that it had received on 30 October.

¹ Application references 18/00594/FULL and 21/01814/FULL

This led the applicant to incur additional unnecessary costs in seeking legal advice about the status of the 'decision notice'.

12. It has been put to me the applicant could have reached out to senior management rather than progress an "unnecessary" appeal, engaged positively with the Council on timescales, and applied for a non-material amendment to resolve the error in condition 2. As I have noted, the applicant did try to engage with the Council on several occasions but the requested clarity on timescales was not provided. Given the sequence of events described above, I find these suggestions demonstrate a poor attitude to customer service on the part of the Council and shortcomings in the proactivity required of it by the Framework.
13. In my appeal decision, I found the revised landscape plans submitted with the appeal do not involve substantial differences or a fundamental change to the application. Instead, they show minor changes to landscaping to ensure consistency with the final set of architectural drawings. Consequently, I am not persuaded by the arguments that these plans are fundamental to the acceptability of the proposal or that they demonstrate the applicant had not finalised their scheme before appealing.
14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Basildon Borough Council shall pay to Blue Door Homes Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Basildon Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Carpenter

INSPECTOR