



Costs Decision

Site visit made on 20 August 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Costs application in relation to Appeal Ref: APP/P1615/W/24/3342413 Morse Farm, Morse Road, Drybrook, Gloucestershire GL17 9AJ

- 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 Mr Philip Roberts for a full award of costs against the Forest of Dean 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 planning permission for the erection of an agricultural building.
-

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. The applicant asserts that the appeal was only necessary due to the Council's unreasonable behaviour relating to: communication and procedures during the determination period; and actions after the appeal was submitted.

During the determination period

4. The applicant states that the standard of communication from the Council during the determination period of the planning application was unreasonable. This relates to, amongst other things, the applicant not receiving letters validating the planning application or requesting an extension to the determination deadline, and the fact that no update on the status of the application was provided before the case officer went on leave.
5. Whilst the Council has confirmed¹ that the planning application was validated on 13 February 2024, due to its administrative system, a copy of the automated acknowledgement letter is not saved on the file. Although frustrating to the applicant and an issue that the Council may wish to resolve to avoid further complaints, the absence of the acknowledgement letter did not affect the determination deadline. I have no substantive evidence before me indicating that the Council sent an extension request to the applicant to account for the public holidays during the determination period. However, I do not consider it unreasonable of the Council to extend the prescribed deadline to make an allowance for these non-working days. No evidence has been

¹ Email from Planning Appeals mailbox, dated 29 April 2024

presented suggesting that any other extension of time request was made by the Council.

6. I have no substantive evidence before me to confirm that the Council's case officer, or any other representative, did or did not, undertake a site visit or has met the applicant. Regardless of the site visit status, I cannot conclude with certainty that this was a pivotal factor in the Council's determination of the planning application.
7. The Council do acknowledge within the response to the applicant's formal complaints² that it failed to deliver its services to the expected level due to the standard of communication with the applicant during the determination period. However, even if the Council's communication with the appellant met the standard reasonably expected, this is not a guarantee that permission would have been granted. The Council did provide an update on the status of the planning application, via email³, and confirmed the the applicant's right of appeal against non-determination. Whilst a frustrating situation, exercising this right was not the only option available to the applicant at this time.
8. The assessment of a proposed development on the character and appearance of an area will require the decision maker to use their judgment when determining its effect and I have reached a different conclusion than the Council in this case. Therefore, even if the Council came to the view that the proposed development complied with Policy CSP.1 of the Core Strategy⁴, the concerns relating to the character and appearance of the proposed development would remain.

After the appeal was lodged

9. Although the applicant lodged the appeal on 12 April 2024, electronic versions of the planning application form and the Council's validation letter were not provided to the Planning Inspectorate until 29 April 2024. This constitutes the 'notice of appeal' date and the point at which jurisdiction transfers to the Secretary of State (SoS). The fact that a formal appeal validation letter was sent to the main parties on 15 May 2024 does not alter the date of transfer. On this basis, the decision notice issued by the Council refusing the planning application does not constitute a formal decision⁵. Whilst there is nothing to prevent the Council from taking this action, I appreciate doing so is confusing to the applicant.
10. The content of the email⁶ from the Council's case officer during this period stating that, as an appeal had been lodged, the matter was no longer in their hands would similarly be confusing for the applicant and, to a small degree, misleading. However, it is clear that, had the application been determined it would have been refused.
11. Even if the Council had not issued the informal decision notice, the appeals process relating to the non-determination of a planning application provides the Council will the opportunity to set out their reasons why the development would have been refused. That being the case, the information necessary for

² Complaint reference: 00208

³ Email from Emma Hughes, dated 11 April 2024

⁴ Policy CSP.1 of the Core Strategy Adopted Version (the Core Strategy)

⁵ Dated 14 May 2024

⁶ Email from William Dodsworth, dated 25 April 2024

this type of appeal is not dissimilar to that of an appeal against the refusal of permission.

12. Whilst I have had regard to the Rural Planning Appraisal (RPA) submitted by the Council with their appeal statement, the conclusion therein is based on several assumptions due to the applicant being unavailable on the date of the site visit. Nonetheless, as the RPA was commissioned by the Council after the appeal was lodged it would not have prevented the appeal, even if the assessor came to a different conclusion regarding the need for the proposed building following a successful site visit.
13. The Council's actions during the processing of the appeal, whilst frustrating for the applicant, are not sufficient to conclude they acted in an unreasonable manner that led to the need to submit the appeal.
14. Therefore, I conclude that the unreasonable behaviour identified above did not result in unnecessary or wasted expense and that an award of costs is not warranted.

Juliet Rogers

INSPECTOR