



Costs Decision

Site visit made on 27 August 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2024

Costs applications

- Costs application 1 is made by Whittlebury Hall & Spa Ltd for a full award of costs against West Northamptonshire Council.
- Costs application 2 is made by West Northamptonshire Council for a full award of costs against Whittlebury Hall & Spa Ltd

Applications made in relation to:

Appeal Ref: APP/W2845/W/24/3337364

Whittlebury Park, Whittlebury, Towcester, Northamptonshire NN12 8WP

- 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 appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for creation of an indoor/outdoor Wedding Ceremony facility, in conjunction with returning the Greenkeepers Compound to formerly approved location.
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Decisions

Costs application 1

1. The application for a full award of costs is refused.

Costs application 2

2. The application for a full award of costs is refused.

Preliminary Matters

3. Costs applications were made by both main parties against the behaviour of the other main party, and I will deal with both applications together.

Reasons

4. 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.

Costs Application 1

5. In claiming costs of the appeal, the applicant submits that the Council has acted unreasonably, both in procedural and substantive terms. Procedurally, it is asserted that the Council's actions have caused delays and that they have been uncooperative throughout the planning process. The applicant claims that the lack of engagement has resulted in the need to submit an appeal against non-determination. In substantive terms, the applicant considers the Council could have applied conditions and that they have been inconsistent in dealing

with applications in particular with regard to the requirement for further information in respect of ecology.

6. The evidence before me indicates that an extension of time had been agreed and that the Council requested further information from the applicant. However, following a disagreement over the need for additional information an appeal against non-determination was lodged. Whilst I appreciate the situation may have caused frustration to the applicant, the circumstances fall considerably short of demonstrating that the Council caused procedural delays due to their unreasonable behaviour. Moreover, I have seen little evidence to show that the Council have been unhelpful or uncooperative. With regards to timeliness, although the application took longer than the prescribed period to determine, even if a decision had been made earlier, this would not have avoided the need for the appeal.
7. The Council's putative reasons for refusal relate to technical matters where the Council sought additional information. It is a matter of judgment as to whether the level of information submitted is sufficient to address its concerns. Although I did not share the Council's concerns regarding drainage and archaeology, being satisfied that on the basis of an outline application that these matters could be secured by the imposition of planning conditions, this would not have overcome the fundamental concerns regarding the ecological implications of the proposal.
8. It is unfortunate that meetings between the parties appear to have been cancelled. Nevertheless, from the evidence before me during consideration of the application the Council undertook a site visit and did engage in dialogue with the applicant, including emails. The Council made their position sufficiently clear on these matters at the time and there is no statutory duty on them to formally meet to discuss them in further detail. The issues were therefore not unknown to the applicant upon lodging the appeal against non-determination.
9. The applicant asserts that consultations with West Northamptonshire Council (WNC) Natural Environment Team and the WNC Lead Local Flood Authority (LLFA) were not undertaken within an appropriate timescale and that the Council were late in publishing the responses thereby preventing the applicant from responding to the issues raised. The response of the LLFA did not add weight to the Council's stance on drainage matters and the Natural Environment Team response validated the Officer's previous concerns regarding an absence of information. The applicant has had opportunity to comment on these submissions during the appeal process. Whilst the Council's tardiness in undertaking consultations is not without criticism, this behaviour did not cause the applicant to incur any wasted or unnecessary costs in pursuing the appeal.
10. In respect of the request for additional ecological information it will be seen from my decision that I concur with the Council, and that there were sufficient grounds regarding ecology alone. Whilst I recognise that the applicant provided some additional information in an attempt to address the ecology concerns, you will see from my decision that this was not sufficient. It therefore follows that I am satisfied that the Council has shown it was able to substantiate such concerns. As a result, I cannot agree that the Council has acted unreasonably in this regard.

11. My attention has been drawn to numerous developments in the locality which the applicant submits the Council have been inconsistent with regards to the level of information considered, particularly in respect of ecology and the imposition of conditions.
12. The fact that there are other developments in the locality does not in itself justify that consent should be granted for the development at the appeal site. Appropriate regard must be had to the individual merits of the proposal, including the description of development and the site context. The evidence before me does not comprehensively establish what information was before the decision-maker in those circumstances, particularly, in respect of ecological submissions. Furthermore, I am mindful of advice in relation to the use of conditions and I am not persuaded that the use of conditions in respect of ecology would be appropriate. Hence, I am not persuaded that it has been conclusively shown that the Council were unreasonable to not be agreeable to a condition to secure additional surveys at reserved matters or that they have failed to determine similar cases in a consistent manner.
13. The applicant has drawn my attention to a number of appeals relating to the Park and the alleged failure of the Council to determine these cases in a timely manner. Be that as it may, my decision relates solely to the findings in the circumstances of this appeal.
14. In respect of the Masterplan, I do not consider that the Council failed to have regard to it as a material planning consideration.
15. There is some evidence to suggest that Officers were minded to recommend approval of the appeal scheme. Frustrating as this can be it is not unusual during the time a planning application is being considered to reach a different view based on information that comes to light, including the consultation responses. Consequently, I cannot find this as unreasonable behaviour on the Council's part.
16. The appeal has been dismissed and therefore, the Council has not prevented or delayed development which should clearly be permitted, having regard to its development plan, national policy and any other material considerations.
17. For the reasons stated, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG on either procedural or substantive grounds. It follows that the applicant was not put to unnecessary or wasted expense in testing the Council's judgement at appeal.

Costs Application 2

18. The Council considers that the applicant acted unreasonably on both procedural and substantive grounds. They submit that the applicant was advised of the need for further information and offered to work proactively with the applicant to reach a positive determination. They state that the information requested is standard and in accordance with the requirements of the policies of the development plan.

19. The evidence before me indicates that the applicant was made aware of the concerns of the Council and was advised of the need for further information early in the application process. It is a matter of judgement as to the appropriate level of information. As an outline application, I concur that matters of drainage and archaeology could be dealt with through the imposition of suitably worded planning conditions. However, I share the view that given the site context the need to submit further information in respect of ecology, and that it is not appropriate to deal with this by condition, should have been apparent from the guidance published by the Government.
20. It is recognised that the applicant proceeded with the appeal with some additional information, in the form of an Initial Site Assessment. Although I have found in the Council's favour in relation to ecology, this does not make the applicant's behaviour unreasonable in this regard.
21. There is no statutory requirement for a planning consultant to submit an application/appeal. The applicant exercised their right to lodge an appeal after the failure of the parties to agree to the level of information required and that the application remained undetermined. This in itself is not unreasonable behaviour.
22. I have addressed the Masterplan in my decision. Whilst the Masterplan may not be an agreed document, I do not concur that the applicant's reference to such documentation to be vexatious.
23. In any event, it is not established how the applicant's actions, unreasonable or otherwise, have caused the Council to directly incur unnecessary expense in the appeal process itself.
24. Even though I have dismissed the Appeal, I do not consider the applicant's to have demonstrated unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG.

Conclusion

25. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. Therefore, both applications for an award of costs are refused.

R. Gee

INSPECTOR