



Costs Decision

Site visit made on 5 November 2024

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st December 2024

**Costs application in relation to Appeal Ref: APP/K0235/W/24/3340141
Land south of 4 Brook Farm Chase, Little Staughton, Bedfordshire
MK44 2AQ**

- 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 K Robins for a full award of costs against Bedford 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 permission in principle for erection of up to four dwellings. Access to be taken from Colmworth Road.
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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 PPG gives examples of the types of behaviour that could give rise to an award of costs against a local planning authority. They are not exhaustive but include preventing or delaying development which should clearly be permitted; having regard to its accordance with the development plan, national policy and any other material considerations. For appeals against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limits and why permission would not have been granted had the application been determined within the relevant period.
4. The applicant cites unreasonable behaviour in the Council's handling of the planning application prior to the appeal because the Council failed to determine the application within the relevant period (5 weeks) and failed to provide a reasonable explanation for the delays. This caused the applicant to appeal against non-determination and incur costs in doing so. The appeal could have been avoided.
5. The Council's case is that the appellant submitted new information in response to the Conservation Officer's comments that needed to be considered, but that the Planning Officer was going on leave and would need extra time. The need to discuss the case with team members and a high workload all contributed to the Council not determining the application in time. The Council point out that the applicant did not engage in the paid pre-application service that the Council offers.

6. From the Council's Officer Report the deadline for determining the application was 5 December 2023. The applicant could have appealed against non-determination at any stage after the relevant period. From the applicant's submitted timeline and exchange of correspondence, I can see that the applicant emailed the Council on 11 December, after the relevant period, in response to the Conservation Officer's comments, to suggest they were 'happy to discuss further'. It was agreed the parties would be in touch the following week. The applicant did not want to agree to an extension of time unless the Council could indicate an outcome, which it did not do at that stage. It appears that this is a stance taken by the applicant's agent in their general dealings.
7. In January, after the Christmas and new year public holidays, the applicant sent several emails asking for a progress update. The Council responded on the 25 January 2024 to say the matter would be taken to a team meeting and that the Planning Officer would also discuss matters with the Conservation Officer.
8. The applicant made several enquiries as to the outcome of those meetings throughout February. Almost a month after contact with the Council, on the 28 February, the Planning Officer emailed the applicant to advise that the application would be refused and went on to explain why, namely that the site lay outside the SPA (the Settlement Policy Area) and despite the applicant's arguments the proposal did not accord with Policy 7S as it failed to meet the various policy criteria and there were no exceptional circumstances. The Officer advised that the Council's Briefing Note provided further guidance on the policy to guide them through the process to a point where a scheme may be supported. The Planning Officer then explained they would be on leave for a few days, would write up the report the following week, but in the meantime the applicant could consider whether to withdraw the application or proceed to decision. However, the applicant did not wait and a week later, on 6 March 2024, lodged an appeal against non-determination.
9. The applicant says if the application had been determined, then the reason for refusal would have been clearer and his appeal more focussed. However, the applicant chose to lodge an appeal before the Officer Report and decision notice, which would have explained why the application would be refused. This would have given the applicant a clearer refusal reason had he appealed after the decision was made. Even without the Officer Report and before they appealed against non-determination, the applicant was made aware of the basis on which the Council would be refusing the application.
10. However, I accept the Council's advice came very late in the process and well after the relevant period had expired. The Council offers little substantive explanation as to what caused the application to be delayed during the relevant period, apart from high caseloads. It is well reported in the planning press that Council planning departments are experiencing staffing and caseload issues. Other reasons for delay, such as taking leave and needing to discuss the case at a team meeting and with other colleagues came after the relevant time period had expired.
11. I see from the evidence that the applicant chose not to engage with pre-application advice for whatever reason. There is no obligation to do so, although the National Planning Policy Framework does encourage it as pre-application advice can give greater certainty as to the likely outcome of an application. Whilst the permission in principle route is intended to speed up the

process for housing-led schemes, it does not mean that pre-application advice cannot be of benefit.

12. The Council's procedure note 'Negotiating Amendments to Submitted Planning Applications' sets out the various degrees of engagement applicants can expect with the Council depending on the category of application. It clearly sets out that for Category 5 applications, as in this case, that *'If there has been no pre-application advice and the issues could reasonably have been identified before submission, we will normally proceed to refusal without negotiation.'* The applicant knew at the outset, when they submitted the application, that it was contrary to the development plan as their case set out arguments to justify the proposal.
13. The Council followed through its concerns about the proposal through team meetings and with specialist colleagues. Whilst this should have been undertaken sooner, it is not unreasonable behaviour. Indeed it shows the Council gave the application full and proper consideration. Furthermore, the Officer Report that has been produced clearly sets out why the Council would not have granted permission for the proposal.
14. However I accept the Council was tardy in not determining the application within the relevant period, and that it took almost a further 3 months to inform the applicant of its likely decision to refuse the application. The Council thus failed to implement the speedier service the permission in principle process is intended to provide. The Council should also have responded to emails in a timely fashion, as this would have avoided the applicant having to chase for updates.
15. However, the appellant was told the application was likely to be refused and the reasons why. Whether the applicant had let the application be fully determined, or appealed against non-determination, an appeal would not have been avoided.
16. To draw the matters together, I find the Council did not act in a manner it should have. There were unacceptable delays and the Council did not provide a good and timely service to the applicant. Hence, the Council gave poor service in this instance, but this does not amount to unreasonable behaviour. Furthermore, the Council's concerns with regard to the application were justified and do not amount to unreasonable behaviour either.
17. I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

18. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Stephens
INSPECTOR