



Costs Decision

Site visit made on 20 November 2024

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Costs application in relation to Appeal Ref: APP/R0660/W/24/3343934

Bullmore Farm, Weathercock Lane, Congleton, Cheshire CW12 3PZ

- 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 and Mrs P Kirby for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for development described as: 'demolition of existing dwelling and erection of replacement dwelling including detached garage and associated landscaping'.
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Decision

1. The application for an award of costs is refused. However, a partial award of costs is granted 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. Paragraph 49 sets out that local planning authorities are at risk of an award of costs if they refuse to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
4. The first element of the applicants' claim relates to the time it took for the Council to issue its decision and the absence of a pro-active approach when considering the application, including a lack of communication. The PPG sets out that if it is clear that a local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. I have been provided with copies of email discussion between the applicants' agent and the Council officers. These provide evidence of extensions of time agreed between the two parties. The Council's decision was issued within the timeframe of the final agreed extension of time.
5. On this basis, it is clear to me that there was communication between the Council and the applicant during this time and some evidence of pro-active working as the Council officers relayed their concerns with the scheme. Whilst there were delays in responding to emails and phone calls, which is regrettable, it is nonetheless apparent that there was fairly regular contact during the application process. It is good practice for a Council to clearly outline its concerns prior to issuing any

decision, which is evident from the emails that I have been provided. I am therefore not convinced that the actions by the Council in this regard have directly caused the applicant to incur unnecessary expense at appeal, nor has it been demonstrated that an appeal could have been avoided.

6. The second element of the applicants' claim relates to the Council not taking into account the applicants' amended bat survey prior to issuing a decision, resulting in a second reason for refusal relating to the effect on Protected Species.
7. The applicants submitted a bat survey report¹ during the period of determination of the application to address concerns raised by the Council's Ecologist following consultation. The Council's Ecologist provided a further consultation response on 14 September 2023, following receipt of the bat survey report. This consultation response highlighted the lack of detail with regard to the bat loft proposed as part of the mitigation. Based on the applicants' evidence, it then appears that the bat survey report was amended including confirmation of the use of the garage at The Piggery as a replacement roost, specifications of the existing building, details of the proposed loft void and a plan showing access points and bat boxes. This was emailed to the Council on 20 September 2023.
8. However, the Council's report states: *'It has been advised that as no precise location for the mitigation bat loft has been proposed, it cannot be considered to maintain the favourable conservation status of this bat species. This substantiates a reason for refusal on ecological grounds and due to contravention of policy SE3 of the CELPS and ENV1 of the SADPD.'*
9. This assessment was reflected in the Council's second reason for refusal which stated: *'The proposed development has not been supported by sufficient information relating to the ability of the proposed development to adequately conserve the nature conservation status of roosting bats'.*
10. The Council states that the bat survey report was provided late on in the determination period, however this was still over three months prior to the eventual issuing of its decision on 23 January 2024. The Council does not appear to dispute the applicants' evidence that the amended bat survey report was supplied during the course of the application. The bat survey report clearly provides a detailed location and means of construction for the mitigation bat loft, contrary to the assertion in the Council's report. On the balance of the evidence before me it appears that the amended bat survey was provided to the Council and that the Council, albeit perhaps erroneously, did not take it into account as part of its decision. This is unreasonable behaviour and has put the applicants to unnecessary expense in defending the second reason for refusal at appeal.

Conclusion

11. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified, relating solely to the cost of responding to the Council's second reason for refusal relating to Protected Species.

¹ Bat Survey Report by Ecology Elements, dated September 2023.

Costs Order

12. 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 Cheshire East Council shall pay to Mr & Mrs P Kirby, the costs of the appeal proceedings described in the header of this decision limited to those costs incurred in responding to the Council's second reason for refusal relating to the effect on Protected Species, with such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Cheshire East 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.

Paul Martinson

INSPECTOR