



Costs Decision

Site visit made on 12 February 2025

by H Faulkner BSc(Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Cost application in relation to Appeal Ref: APP/E3335/W/24/3351926

Land at New House Farm, Combe Wood Lane, Combe St Nicholas, Chard, Somerset TA20 3NH

- 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 D King of Bickenhall Developments Ltd for a full award of costs against Somerset 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 the change of use of land from agricultural to residential curtilage of Plot 2 of development at New House Farm, Combe Wood Lane, Combe St Nicholas.

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's case is that the Council acted unreasonably as they did not determine the application within the statutory timeframe and therefore costs were incurred due to the appeal being submitted. Given that the Council concluded that they would have approved the application the applicant is of the view that the appeal could have been avoided.
4. The response from the Council is that during the course of the application there were staff shortages resulting in increased caseloads. The case officer went on extended sick leave and other officers left the Council. The Council had further delays in trying to recruit new staff due to Somerset Council declaring a financial emergency in 2023 and their being a shortage of local authority planners.
5. The application was validated on 13 April 2024 with a target date for decision of 8 June 2024. The appeal against non-determination was subsequently submitted on 15 September 2024.
6. The applicant states that until the appeal the Council made no communication during the application process and this is not disputed by the Council. The Council did not determine the application within the statutory timeframe. They did not contact the applicant during the course of the application to either seek an extension of time, indicate a date for decision or whether there was likely to be a positive outcome for the application.

7. The PPG outlines the expectation that parties behave reasonably throughout the planning process. However, costs can only be awarded in relation to unnecessary wasted expense at the appeal, although behaviour and actions at the time of the planning application can be taken into account in consideration of whether or not costs should be awarded. As far as the appeal itself is concerned the Council have cooperated, met all deadlines set and behaved in a reasonable manner.
8. With regards to the application the PPG states that where a planning authority fail to determine an application within the time limits it should give the applicant a proper explanation. It states that in the case of non-determination they could explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted. In this case the reason provided by the Council relates to a resourcing issue. Whilst there are acknowledged difficulties at some Local Authorities the complete lack of communication was not acceptable. Had the Council contacted the applicant to let them know that there would be a delay in making a decision an appeal and they did not have any objections to the proposal then an appeal may not have been necessary.
9. Given that the Council communicated during the appeal that they would have approved the application, they could have determined the application without the need for an appeal.
10. The failure by the Council to engage with the planning application is unreasonable behaviour. This led to the unnecessary and wasted expense of lodging an appeal. A full award of costs is therefore justified.

Costs Order

11. 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 Somerset Council shall pay to Mr D King of Bickenhall Developments 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.
12. The applicant is now invited to submit to Somerset 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.

H Faulkner

INSPECTOR