
Costs Decision

Site visit made on 25 February 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2025

Costs application in relation to Appeal Ref: APP/P1425/W/24/3348808
Land and buildings adjacent to Ham Cottage, Slugwash Lane, nr. Wivelsfield Green, East Sussex RH17 7RG

- 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 R Fawehimi for a full award of costs against Lewes 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 development described as 'Erection of two new dwellings, following the partial demolition of stables, demolition of kennels outbuildings and structures; and associated landscaping including remodelling of existing sand school and re-siting adjacent to it of two partially retained stables, reduced in size (alternative to conversion approved for two dwellings under LW/23/0196)'.
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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 PPG goes on to provide examples of unreasonable behaviour by local planning authorities, which include amongst other things preventing or delaying development which should clearly be permitted. The PPG also warns that delays in the application process leading to an appeal against non-determination may result in an award of costs against the local planning authority, if an appeal is allowed, in circumstances where it is concluded there were no substantive reasons to justify delaying the determination and better communication would have enabled the appeal to be avoided altogether.
4. The appellant contends, in summary, that the Council behaved unreasonably by failing to determine the application in a timely manner. Consequently, he felt that he had no realistic alternative but to take the matter to appeal, resulting in avoidable costs. In response, the Council acknowledges some responsibility for delays in its handling of the application. However, mitigating circumstances are highlighted, which include a pattern of applications described as seeking to 'bank' residential permissions in otherwise unsuitable locations outside settlements, by means of Policy DM4 of the Lewes District Local Plan Part 2 (LLP2), and the need to engage with the appellant, to seek necessary amendments to the scheme.

5. The timeline in the appellant's statement of case indicates that the application was not apparently reviewed by the Council for several months after its submission in October 2023. Although there were some telephone conversations and emails between the parties in the period from December 2023 to February 2024, including a brief indication of the Council's policy concerns, the first substantive feedback to the applicant was in an email sent in March 2024. Amendments were proposed in response, with an expectation that they would be considered by the Council at a design review panel. However, that meeting was delayed and there is no clear evidence of further feedback around that time.
6. The amended plans were formally submitted at the end of May 2024. At the same time, an extension of time for determination of the application was agreed. However, while there was further correspondence between the parties, renotification of interested parties, and an expectation of a further design review process, the application had not been determined by the agreed extension of time date. Nor had any further formal feedback from the Council been provided.
7. As set out in paragraph 39 of the Framework, there is an expectation that local planning authorities will work proactively with applicants. That can extend to securing amendments which are considered necessary in the context of a particular case. As such, it was not in principle unreasonable for the Council to seek amendments, to address relevant policy concerns. However, that process was highly protracted, with repeated delays on the part of the Council, as well as unfulfilled expectations of constructive feedback on both the initial application and the amended plans. The Council acknowledges that it was very late dealing with the application and has not disputed the appellant's timeline.
8. The appeal is a direct consequence of the lack of a decision on the application within either the initial expected timescale or the extension of time agreed at a much later date. Furthermore, several weeks after the appeal had started, the Council forwarded a decision notice purporting to grant planning permission and confirmed that it would not be providing a statement of case. Therefore, notwithstanding the Council's concerns about the approach taken to Policy DM4 and housing outside settlements, it did ultimately conclude that the proposed development was acceptable, on the basis of the amended plans.
9. While the proposed development does conflict with Policy DM1 of the development plan, I have concluded that there are material considerations which outweigh that conflict. The Council reached the same conclusion. As such, the Council's behaviour delayed development which should clearly have been permitted. There is no substantive reason for the overall level of delay and better communication could have enabled the appeal to be avoided altogether. In those circumstances, the PPG warns that an award of costs may be made.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 Lewes District

Council shall pay to Mr R Fawehimi, 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.

The applicant is now invited to submit to Lewes District 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.

Jane Smith

INSPECTOR