



Costs Decision

Site visit made on 3 April 2025

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 May 2025

Costs application in relation to Appeal Ref: APP/P3040/W/24/3353882

- 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 Nigel Burton for a full award of costs against Rushcliffe 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 planning permission for demolition of existing dwelling and erection of replacement dwelling and outbuilding.

Tally Ho, Ash Lane, Costock, Nottinghamshire LE12 6UX

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 applicant claims that the time wasted at the application stage, and the failure of the Council to reach a decision has led to the need to follow the route of an appeal.
4. There has been considerable delay in the application process and I can see from the e-mails submitted that the applicant has been proactive in trying to reach an agreeable solution. Despite the delay, the evidence indicates that the Council has engaged with the applicant which has allowed disputed issues to be narrowed down. The proposal originally included a number of other outbuildings including a garage and other matters such as a swimming pool and works to the access.
5. The Council state that a report and recommendation had been completed and signed by the manager by 16 February 2024 but the decision was not issued to allow discussions with the applicant. However, pertinent to this costs application is a communication of 18 July 2024 from the Council to the applicant's agent indicating that only limited weight could be applied to the fall-back position as the schemes that had been approved as permitted development through Certificates of Lawfulness¹ had not been implemented in full. Therefore, the Council did not consider that the fall-back position amounted to the very special circumstances necessary in this Green Belt case. From the evidence submitted the last

¹ Refs: 23/01470/CLUPRD & 23/01621/CLUPRD.

communication between the parties was in July 2024. The appeal form is dated 16 October 2024.

6. Whether or not the fall-back position amounted to very special circumstances necessary to overcome the harm caused by inappropriate development in the Green Belt is a matter of judgement. Whilst I have found that the fall-back did not meet this high bar, Case Law has established that fall-back is a material consideration provided there is a legal fall back use in that the development can be lawfully undertaken without the need for a new planning application and there is a real prospect of the development occurring². In terms of 'a real prospect' the Court of Appeal has held that in order for a prospect to be real and not merely theoretical, it did not have to be probable or likely, a possibility would suffice dependent on the fact-specific assessment of each individual case³. There is no requirement in established law that the fall-back position, in this case, the approved Certificates of Lawfulness for proposed development must have been implemented or even commenced.
7. The Council's position on this has created a stumbling block for advancing an approvable development. This approach has no grounding in law and the Council has not explained why it took this particular view. I consider that in this regard, the Council has acted unreasonably.
8. The delay and the failure of the Council to determine the application lead the applicant into submitting the appeal. However, the Council has clearly indicated that it would have refused the planning application and despite the amendments made, which addressed a number of matters, the proposal was still unacceptable. The process has resulted in substantial delay in obtaining a decision. There is no explanation as to why a decision was not made following the Council's last communication in July 2024. However, whilst it has taken the appeal to obtain a full reason why the Council found the proposed development unacceptable, its concerns were known by the appellant/agent for a substantial period of time before this. However, the Council's failure to issue a decision, given its view on the non-acceptability of the proposal was unreasonable.
9. Whilst I find that the Council has acted unreasonably with regard to its interpretation of the fall-back position and its delay in failing to issue a decision, I do not find that this has prevented or delayed development which should clearly have been permitted. I do not therefore consider that the appellant has incurred unnecessary or wasted expense in the appeal process.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J D Clark

INSPECTOR

² R.v Secretary of State for the Environment and Havering Borough Council.

³ Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government.