



Costs Decision

Site visit made on 26 March 2018

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 May 2018

Costs application in relation to Appeal Ref: APP/H0738/W/18/3193185 Riverside Lodge and Lands, A67 from Urlay Nook Road to Airport (southside), nr Eaglescliffe, Stockton, TS16 0QD

- 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 Steve Harrison for a full award of costs against Stockton-on-Tees 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 erection of a single-storey, 2-bedroom, log cabin with decking surrounding, as a single permanent dwelling to replace the existing accommodation of motor-home & caravan; erection of 2x holiday-let, wooden pod-cabins, on concrete bases; formation of 4 more concrete bases for possible future podcabins; retention of secure, fenced compound; retention of existing fencing business use from the site; relocation of existing tool store / office structure within compound; retention of existing boundary treatments; retention of field-shelter, shed, storage-shed & toilets; retention of existing access; and retention and formation of associated existing & new car parking & landscaped areas.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Claims can be procedural-relating to the process; or substantive-relating to the issues arising from the merits of the appeal.
3. Examples of circumstances when the local planning authority's handling of the planning application prior to the appeal may lead to an award of costs is set out are set out in paragraph 48 of the PPG. It states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
4. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and

- better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
5. The applicant's case is based on the fact that the Council failed to determine the application subject of the appeal within a period of over seven months. The Council have not formally responded to the costs application; however, the reasons for the delay have been communicated to the applicant in a series of email correspondence. This correspondence indicates that the delays are attributed to: seeking legal advice regarding the existing lawful use of the site and the 'fall-back' position; change of case officer; staff shortages and holidays. The applicant has agreed to the extensions of time requested by the Council and appears to have cooperated throughout the process.
 6. I consider that the initial delays associated with seeking legal advice were reasonable. However, although I have sympathy with the issues the Council were facing, subsequent delays appear to have been excessive. Consequently, I consider that the Council has acted unreasonably in this regard.
 7. Nevertheless, whilst I understand the applicant's frustrations with the delays, I must also consider the matter of wasted expense and whether better communication with the applicant would have enabled the appeal to have been avoided altogether.
 8. The Council have indicated that they would have refused the application on two grounds which are consistent with the feedback provided to the applicant in the series of email correspondence. The first ground relates to the effect of the proposal on the character and appearance of the area. Whilst I have concluded that the proposal would not have a harmful effect on the character and appearance of the area, the Council have clearly referred to the scale and nature of the proposal and these are plainly relevant considerations. The Council's statement elaborates on these matters. Consequently, I consider that the Council has raised legitimate concerns in an adequate manner.
 9. The second ground relates to the location of the proposed business and tourist accommodation on a site where occupiers are likely to rely on the private car for journeys for retail, leisure and recreation and other services. I have concluded that there would be some conflict with Policy EN 13 of the Local Plan in this regard. However, I consider that visitors to the fencing business would be likely to require a car in any event and the occupiers of the tourist accommodation would have different needs to that of permanent residents. I also consider that the benefits of the development/proposal to the local economy would outweigh the policy conflict. Nevertheless, whilst I have reached a different view, the Council have raised legitimate concerns in an adequate matter.
 10. Whilst I have concluded that the Council have acted unreasonably with regards to the delays the proposal results in conflict with the development plan and the Council has stood by the concerns and views expressed in the email correspondence regarding the proposal. Consequently, I do not consider that improved communication or a speedier handling of the application would have resulted in a different outcome or the appeal being avoided altogether.
 11. No further detailed evidence has been commissioned for the appeal and the fencing business has continued to operate in the meantime. In relation to the

proposed tourist accommodation the applicant does not claim lost revenue as a result of the delays and the PPG is clear that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining permission.

Conclusion

12. I conclude that the Council acted unreasonably in terms of the delays experienced with the application; however, due to the conflict with the development plan, I have concluded that it is likely that the application would have been refused in any event resulting in the same outcome.
13. Consequently, I do not consider that the appellant has incurred unnecessary or wasted expense, as described in the PPG. The application cannot, therefore, succeed.

Caroline Mulloy

Inspector