



Costs Decision

Site visit made on 5 September 2019

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2019

Costs application in relation to Appeal Ref: APP/R3325/W/19/3228725 Land rear of 18 to 24 Westcombe, Templecombe BA8 0LH

- 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 Thorner of Flower and Hayes Developments for a full award of costs against South Somerset 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 the erection of 13 dwellings without complying with condition 1 of application 17/04047/S73A.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Background

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance indicates 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. The Guidance goes on to explain that 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.

Reasons

5. In this case, the only effective difference between the scheme permitted on appeal under Application 17/04047/S73A and the present proposal was the substitution of the bungalow on Plot 1 for a 2 storey dwelling. However, the same dwelling proposed on Plot 1 had previously been permitted under Application 18/01071/S73A. The appeal scheme was, therefore, an amalgam of

- earlier applications where all the elements had previously been considered and found acceptable.
6. The Council highlight its delegation scheme, allowing a process of member call into committee, and that there was a period of election purdah, which is said to have impeded committee consideration of the proposal within the statutory period. However, I am not satisfied that this should have been such a hinderance or could not have been anticipated and addressed to prevent the timely determination of a reasonably straightforward application. In my view, the Council has not presented convincing or substantive reasons why it was not able to determine the application within the statutory period.
 7. The Council say it was open for the appellant to approach it and discuss the processing of the application, however, I am not aware of any amendments or other matters that were necessary to expedite the determination of the application or action that the appellant could have taken to help the Council with its decision making. The appellant wrote to the Council shortly after the end of the statutory period saying he would appeal on the basis of non-determination by the end of that week. I consider that the appellant had a reasonable expectation that the application would have been determined within the statutory period in this case and while the Council say that they were unable to meet this further date, it had had the previous weeks to move the application to a decision.
 8. After the appeal against non-determination had been made, a report was presented to the Committee to consider whether to defend the appeal. The Officer Report commented that the acceptability of the proposed amendments had already been considered and agreed through previous applications, albeit in a piecemeal manner. The report comments that it is not considered that the building out of all three plots as two-storey dwellings, as detailed on the submitted plans (and which is identical to that previously approved) will give rise to any new demonstrable harm over and above what has already been approved.
 9. The Committee is not required to agree with the recommendation of its officers, but if it wishes to come to a different view it needs to provide a cogent argument based on sound planning considerations. In this case, the concern with overlooking would have been assessed under the previous application for the 2 storey dwelling on Plot 1 and which had been granted planning permission. No robust case was made that planning circumstances had changed since that earlier decision and no adequate explanation was made for the difference between the two approaches taken by the Council. This resulted in two cases effectively not being considered in a consistent manner.
 10. In the light of these circumstances, I find that there was no substantive reason that justified the delay in determining the application. I have no detailed information that indicates that the Council explained to the appellant why the application had been delayed or confirmed a date for determination to try to avoid an appeal at that time. Furthermore, when the Council did make a resolution in respect of the proposal it failed to provide a robust and clearly evidenced explanation for that approach and this has resulted in development being delayed which should clearly have been permitted. These actions amount to unreasonable behaviour and the appellant has incurred unnecessary and wasted expense by having to appeal.

Conclusion

11. In the light of the above analysis, I have found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 South Somerset District Council shall pay to Mr R Thorner of Flower and Hayes Developments, 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.
13. The applicant is now invited to submit to South Somerset District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR