



Costs Decision

Site visit made on 31 January 2024

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Costs application in relation to Appeal Ref: APP/L2250/W/23/3319922 Lyveden, Stone Street, Westenhanger, CT21 4HS

- 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 John Moberly for an award of costs against Folkestone and Hythe 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 outline planning permission for erection of two detached houses on land to the sides of existing dwelling.
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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. The applicant has requested a specific sum to cover additional fees associated with the appeal.
3. The planning application was submitted in June 2022. Despite numerous emails and calls from the applicant and his agent, the matter appears to have stalled leaving the applicant to feel that he had no choice but to appeal in April 2023. The Council regrets this but explains that it was experiencing acute staffing issues at the time and that it was not possible to re-distribute the case to another officer.
4. The PPG on *Determining a Planning Application* states that decisions should be made as quickly as possible and within the statutory time limit. The National Planning Policy Framework also indicates that local planning authorities should work proactively with applicants. The way that the Council dealt with the application was neither timely nor constructive. There is also no evidence to indicate that the position the Council found itself in or any updates about progress were given to the applicant, other than an email in November 2022. This is all unsatisfactory and the length of time that the application remained undetermined was unreasonable.
5. However, even if the Council had provided advice to the applicant about the shortcomings of the proposal, it is unlikely that the appeal would have been avoided. This is because of the strict operation of the Conservation of Habitats and Species Regulations 2017 and the absence of any effective mitigation measures to deal with the nutrients that would affect the important wildlife sites at Stodmarsh. Furthermore, if the Council had determined the application

swiftly then it would have been refused and the applicant would still have had to bear the cost of making the appeal if he wanted to pursue the matter.

6. In conclusion, there has been unreasonable behaviour because of the lengthy delay that the applicant experienced and the lack of meaningful communication. However, this has not resulted in unnecessary or wasted expense. Therefore, an award of costs is not warranted.

David Smith

INSPECTOR