



The Planning Inspectorate

Costs & Decisions Team

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Your Ref:
Our Ref: APP/V2255/X/20/3254350
Date: 25 November 2020

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 195 AND 322
APPEAL BY MS JOANNA CAMPBELL: LAND AT NOREVIEW, WARDEN ROAD,
EAST CHURCH, NR SHEERNESS, KENT: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's letter of 16 September 2020 confirming the withdrawal of the above appeal against the Swale Borough Council's failure to make a decision on the Lawful Development Certificate (LDC) application within the statutory timescale.

2. This letter deals with your application, on behalf of the appellant, for an award of costs against the Council as made in your correspondence of 25 June, 21 September and 14 October 2020. The Council replied in correspondence of 12 October 2020. As these costs submissions have been made available to the parties it is not proposed to summarise them.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 10 and 11 below. The costs application succeeds and a full award of costs is being made.

Basis for determining the costs application

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

5. The application for costs has been considered in the light of the relevant part of the Government's Planning Practice Guidance on costs (PPG), the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

6. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably by failing to determine the planning application within the statutory 8-week period, causing the appellant wasted expense in submitting an unnecessary appeal. The guidance at 048 & 049 of the PPG is considered particularly relevant.

7. Paragraph 048 advises 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. Paragraph 049 points out that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

8. The relevant circumstances leading to the withdrawal of the appeal have been carefully examined. The appeal LDC application was submitted on 4 April 2020. The target date for determination of the application was 12 June 2020. In an e-mail of the same date, the Council requested further information from the appellant and asked for agreement to an extension of time for determination of the application to 26 June 2020. The appeal against non-determination was submitted on 15 June 2020. An identical LDC application was submitted to the Council on 22 June 2020 and was approved on 20 August 2020. The appeal was withdrawn on 16 September 2020.

Conclusions

9. The Council contend that had the appellant provided the requested further information and agreed an extension of time for determination of the application, the appeal would not have been necessary. The Secretary of State accepts that it may well have helped to resolve the matter without a need for an appeal had the appellant at least responded to the Council's e-mail of 12 June 2020, which was the last day for the application to be determined within the statutory 8-week period. However, the Council's point is somewhat lost by the fact they subsequently went ahead and granted permission on an identical application, albeit for something they considered to be at its limitations for a material change of use, without having received the extra information they had requested. Therefore, it follows that there does not appear to be any reason why the appeal application could not also have been granted without that information, and within the required time scale. The inescapable fact is that the Council has granted permission on an identical application based on identical evidence. The Council's actions effectively delayed development which should clearly have been permitted and caused the appellant to incur wasted expense in submitting an unnecessary appeal. This amounts to unreasonable behaviour within the scope of the costs guidance. A full award of costs is therefore being made.

FORMAL DECISION

10. For these reasons, the Secretary of State has decided that a full award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

11. Accordingly, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 195 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that Swale Borough Council shall pay to Ms Joanna Campbell her costs of the appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. You are now invited to submit details of those costs to Rebecca Corrigan of Swale Borough Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to her.

Yours faithfully

K McEntee

KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf