



3/24 Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5601
Customer Services: 0303 444 5000

Jackie Noquet
Bishops End
Street Through Burdrop
Sibford Gower
Banbury
Oxfordshire
OX15 5RQ

Your Ref:

Our Ref: APP/C3105/A/13/2203382

Date: 28 May 2014

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 322
LAND AT BISHOPS END, STREET THROUGH BURDROP, SIBFORD GOWER,
BANBURY
APPEAL BY MR GEOFFREY RICHARD NOQUET: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's appeal decision of 17 February 2014. The appeal was by Mr Geoffrey Richard Noquet against the failure of Cherwell District Council's failure to determine, within the appropriate period, a planning application (13/00781/F) dated 23 May 2013 for the conversion of a redundant barn/store into a 1 bedroom and bathroom self contained holiday letting cottage, on land described above.

2. This letter deals with the appellant's late application¹ for an award of costs against the Council as made in written correspondence dated 31 March and 17 April 2014. The Council replied on 14 April 2014. As these costs submissions have been made available to the parties it is not proposed to summarise them in any detail.

Summary of decision

3. The formal decision is set out in paragraph 11 below. The costs application fails and no 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. An award of costs is not made simply because an appeal has been successful. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

5. 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

¹ The planning Inspectorate's letter of 25 March 2014 explained the reasons why the Secretary of State had decided to accept the late application for consideration.

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.

6. The Government's Planning Practice Guidance (PPG) was published on 6 March 2014. The application for costs has been considered in the light of this guidance, the appeal papers, the written costs correspondence on costs and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably in their handling of the appeal application with the result that the appellant was put to unnecessary expense in appealing.

8. It is noted that the planning application, which appears to have gained the support of Council Planning Officers, was not determined within the publicised 8 week time frame. However, before the expiry of that period the Council informed the appellant of the possibility that, in the light of the planning history of the appeal site, the planning application would be decided by the Council's Planning Committee rather than via delegated powers. Unfortunately it was not possible for the planning application to be considered by the Planning Committee at its scheduled meeting on 8 August 2013 and, as a result, the 8 week determination period was missed. But before the application could be determined via a later Committee meeting the appellant decided to exercise the right of appeal against non-determination. The Planning Committee subsequently advised, following consideration of the matter, that if the planning application was still before them for determination (rather than with the Planning Inspectorate on appeal) it would have been approved. The Council informed the appellant that if the appeal was withdrawn and a planning application was re-submitted planning permission would be granted. However, the appeal proceeded and no further planning application was made. In this regard it is noted that the Council's costs submissions pointed out that they have no record to the effect that the appellant was advised that a further planning fee would be required for a re-submission.

Conclusions

9. The circumstances as described are considered most unfortunate but it is not uncommon for a Council to decide, after due consideration, that a decision on a planning application should be taken by the Planning Committee rather than via delegated powers. While some delay might result from such deliberation, as in this case, it does not necessarily mean that the Council has acted unreasonably by failing to reach a determination within the 8 week period. It was not the case that the Council simply failed to take no action in response to the planning application. They kept in contact with the appellant during the statutory determination period and informed him about the potential for some delay. The appellant nevertheless decided to promptly appeal after the 8 week period, and to pursue the appeal, rather than to wait for the Council's decision. Having taken that step the Council no longer retained jurisdiction to determine the application. The appellant had the option of proceeding with the appeal or withdrawing it and re-submitting the planning application² for the Council's determination. It was his decision to appeal and to proceed with it despite the Council's indication that the development was acceptable and that they would grant planning permission if a planning application was re-submitted.

² Having clearly established in writing with the Council whether or not another fee was required

10. While accepting that you will be disappointed at the outcome the Secretary of State concludes that, in the circumstances described, the Council did not act unreasonably in this case.

FORMAL DECISION

11. For the reasons stated above, the Secretary of State has decided that an award of costs on grounds of "unreasonable" behaviour resulting in unnecessary expense, is not justified, in the particular circumstances of this case. The appellant's application for costs is therefore refused.

12. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review within 6 weeks of the decision.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'John Gardner', written in a cursive style.

JOHN GARDNER

Authorised by the Secretary of State
to sign in that behalf

