

CHERWELL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

RESPONSE TO COSTS APPLICATION

Application for costs by Mr and Mrs Robert Hooke against Cherwell District Council in relation to the refusal to grant planning permission for the erection of new detached dwelling with integral garage at Streamways, 8 Rectory Close, Wendlebury.

Appellant : Mr and Mrs Robert Hooke

Appeal Site : Streamways,
8 Rectory Close,
Wendlebury,
Bicester,
OX25 2PG

Appellant's Agent : Mr Simon James,
4 Chapel Court,
Wilkinson Place,
Witney,
OX28 6GG

LPA Reference : 18/00848/F

Planning : APP/C3105/W/19/3220463
Inspectorate
Reference

1. INTRODUCTION

1.1 The following constitutes the Council's response to the costs application made by the appellants.

1.2 The 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. The PPG states that an application for costs will need to 'clearly demonstrate' how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

- 1.3 The Appellant has submitted a separate application form for the costs appeal, however, comments within the Appellants Statement of Case (ASoC) relate to the costs appeal and why it is felt the Council acted unreasonably. The Council's response to this cost application focusses on responding to the reasoning as set out in the application form for the award for appeal costs by the Appellant and within the ASoC

2. THE COUNCIL'S RESPONSE TO APPELLANT'S COSTS APPLICATION

- 2.1 The Council will now focus on responding to reasoning why the appellants considered the Local Planning Authority behaved unreasonably. The Appellant's comments from the ASoC are in bold with Council's response below:

- 2.2 **'After the refusal was issued an attempt to enter into dialogue with the Planning Officer who dealt with the Application was pursued to try and establish what if anything would be acceptable. This attempt failed as the Planning Officer seemed reluctant to enter into any discussions and it was therefore impossible to enter into any sort of dialogue with him.'**

- 2.3 Cherwell District Council offers a pre-application service. The appellant did not engage in this process prior to the submission of the first application (17/00742/F) or the subsequent application (18/00848/F). While there is no transcript of the conversation that the appellant refers to, Government guidance contained within the PPG ('Before Submitting an Application') encourages prospective applicants to enter into pre-application discussions, rather than entering into dialogue with Officers during the application process.. Such an approach is also recommended in the Council's 'Negotiating Submitted Applications Protocol' (2017) (Appendix 1).

- 2.4 **'As I had not received any correspondence regarding the Application, on 4 July 2018 I telephoned the Planning Officer and left a voicemail asking for an update on the Application. On 11 July 2018 the Planning Officer sent me an e-mail to say that the Application was going to be refused.'**

- 2.5 Whilst Officer's do generally respond to voicemails within 3 working days, on this occasion 5 working days were required to issue a response via email to Mr James. As stated, the voicemail was left on 4th July 2018 (Wednesday). It is noted that the Officer was also on site visits during this day. On 5th July 2018 the Officer was writing a committee report and took Annual Leave on 6th July 2018. On 9th July 2018, the Officer was acting as Duty Officer between 9am – 1pm and had a separate pre-application meeting in the afternoon. 'Furthermore, the relevant Officer required time in order to consider the appellants planning application with the Team Leader and Senior Manager before a response could be issued to Mr James on 11th July 2018.
- 2.6 Whilst the Council's 'Negotiating Submitted Applications Protocol' (2017) (Appendix 1) notes that the Council may invite further information if it is considered that the proposal can be made acceptable with 'minor amendments', it is important to note that the Council had in principle concerns with the appeal scheme hence why amendments or revisions were not sought during the processing of the application.
- 2.7 Cherwell District Council as local planning authority (LPA) refused planning permission for the above development on 17th July 2018 following validation of the application on 22nd May 2018. The Council therefore made its decision within a reasonable time period and within the eight week statutory target set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).
- 2.8 The Council determined the application in a timely manner in accordance with all relevant legislative requirements and took account of all representations submitted in response to statutory public consultation. Similarly, it has met all of the deadlines set by the Inspectorate in this appeal. The decision notice included clear and concise reasons for refusal. Such a concern is clearly a material planning consideration and reference was made to relevant development plan policies and national policy guidance. Consequently there can be no doubt that the Council has behaved reasonably in its handling of both the application and appeal processes.
- 2.9 **'The delay in responding to my voicemail left us with no time as the date for determination was looming and we had missed the deadline to request that the Application was called to Committee for a decision so in order for the right of appeal to be protected we opted for the refusal rather than withdrawing the application.'**

- 2.10 The applicant/agent has does not have a right to call applications forward before Planning Committee. This request must be submitted by an elected member of Cherwell District Council for material planning reasons as set out in the Council's 'Committee Terms of Reference and Scheme of Delegation' (CTRSOD) (2018).
- 2.11 **'Only two reasons for the refusal were given and the second one can be discounted as the Planning Officer did not take into consideration the contents of the Flood Risk Assessment report and the fact that the Environment Agency did not raise any objections on this occasion.'**
- 2.12 The Council's assessment of the development includes the application site as a whole (as this would form the new planning unit), and on this basis the reason for refusal is correct in stating that the development is in Flood Zones 2 and 3.
- 2.13 Whilst the Council is aware that the Environment Agency did not object to the application provided the built development is located outside Flood Zone 3, their response does not take account of the Sequential Test. The PPG (Paragraph: 019 Reference ID: 7-019-20140306) sets out that the aim of the Sequential Test is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding).
- 2.14 The Government's PPG (Paragraph: 034 Reference ID: 7-034-20140306) makes clear it is for local planning authorities to consider the extent to which Sequential Test consideration have been satisfied, and in this case the Council has concluded that the appeal proposal fails the sequential test because the site is not wholly within Flood Zone 1, and the dwelling itself whilst not located in Flood Zone 3, is located partly in Flood Zone 2. That is the basis of the second reason for refusal. Thus, the Council are of the opinion that second reason for refusal is clear, justifiable and reasonable.

3. CONCLUSION

- 3.1. In conclusion, the Local Planning Authority does not consider that, in light of the advice within the Planning Practice Guidance, it has acted unreasonably such that this has incurred unnecessary and wasted expense in the appeal process. Accordingly, the Inspector is respectfully requested to dismiss the application for costs.

Documents referred to in this statement are available for inspection at Cherwell District Council, Bodicote House, Bodicote, Banbury during normal office hours.

Planning Inspectorate Reference: APP/C3105/W/19/3220463

Planning Application Number: 18/00848/F

Date: 29/03/2019

Appendix 1 - Cherwell District Council: Negotiating Submitted Applications Protocol (2017)

Appendix 2 - Committee Terms of Reference and Scheme of Delegation (2018)