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## Costs Decision

Site visit made on 3 August 2021

by **Helen B Hockenhull BA (Hons) B.PI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 August 2021

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### **Costs application in relation to Appeal Ref: APP/Y2736/W/21/3269844 Land west of Hungerhill Lane, Wombledon Airfield, Wombledon YO62 7RY**

- 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 Gordon Herbert, Gracemax Ltd for a full award of costs against Ryedale 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 development proposed is the change of use of part of airfield land to allow the siting of 6 No. timber clad static holiday units with decking together with formation of a site vehicular access, associated permeable gravel internal site road with car parking spaces for individual units, site landscaping and fencing with proposed low level site entrance lighting.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. 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.
3. The applicant seeks a full award of costs on a number of grounds both procedural and substantive. It is alleged that the Council failed to engage with the applicant in a positive and productive way. The Council refused to meet the Civil Aviation Authority and that they did not issue an extension of time letter. It is also submitted that the Council did not explain why they had not made a decision within the prescribed timescale. Furthermore, it is alleged that the Council failed to determine an application that was similar to one that had previously been approved and that they delayed or prevented development that should have been approved. It is also put forward that the Council did not follow procedure in voting on the application and that incorrect information was given to the Committee at the time of their decision.
4. The application was submitted on 1 December 2020. The applicant states that he tried to contact the Case Officer by telephone and email numerous times in January and February 2021 and mostly received nothing back. The Council have referenced notifications and emails to the applicant dated 5 January 2021 and 10 February 2021. These appear to be procedural in nature. I accept that further information may not have been required and therefore no such request

was made. Nevertheless, it would have been good customer service for the Council to respond to the applicant's emails. Whilst I have not been referred to this, the Covid pandemic is a factor which may have affected communication between the parties, particularly as officers may have been working from home and not in the office to take telephone calls. Whilst it is clear to me that communication could have been better, given the timescales involved and the fact that correspondence was sent, I do not consider that it points to unreasonable behaviour on the Council's part.

5. The applicant states that he received no extension of time letter from the Council. I have been provided with a copy of such a request dated 10 February 2021, which explains that due to objections received, the Council intended to take a report to Committee on 16 March 2021. The letter requests a response by 19 February 2021. This correspondence was not received by the applicant. Seven days after the deadline on the letter, the appeal was submitted. The Council could have chased up a response to the request, however they only had a week to do so before the appeal was made. The Council sent the correspondence in good faith and in so doing I consider that they did not act unreasonably.
6. The applicant takes issue with the delay in taking a report to Committee after the appeal had been submitted, the nature of the decision made, and the Council's refusal to discuss the case or attend a meeting with the Civil Aviation Authority. These matters suggest to me that the applicant misunderstands the appeal process and the consequence of submitting an appeal. Once the appeal process has commenced, the Council has lost the ability to determine the application, the decision making then falls to the Planning Inspectorate. The purpose of the report to the Council's Planning Committee was to seek the members views on what decision they would have made if they were able to determine the application. At this stage in the process, it is understandable that the Council refused to meet with the CAA or review the case any further, as they could not make a decision. Given the above, I find that the Council have not acted unreasonably in this regard.
7. The applicant submits that the Council has failed in its duty to approve a similar application to one that they approved on the same land area. I note that the red line planning application boundary of the appeal site lies within the boundary of the approved application for 5 holiday units on the site (Application Ref 20/00230/MFUL). From the evidence I have been provided, it appears that this application sort permission for the change of use of part of the airfield land to allow the siting of 5 no. timber clad static holiday units. My interpretation is that the description of development did not seek the change of use of the entire site for tourism use. Irrespective, it is not for me to make judgements on other decisions which are not before me.
8. In any event, the Council did not make a decision on the application. Therefore, it cannot be said that they have failed to determine similar applications in a consistent manner. Moreover, each application must be considered on its individual merits. The appeal scheme proposed holiday accommodation in a position closer to the runway, therefore the material considerations were different in this case.
9. The 8-week target date for the determination of the application was 26 February 2021. Due to objections received, the Council intended to take a

report to Planning Committee on 16 March 2012. This short delay was not unreasonable, as it is often the case that Committee cycles will put back a decision for a few weeks. Asking for an extension of time was justified in these circumstances. The Council highlighted in an email dated 5 January 2021 that there may be a need to go to Committee and this was confirmed in a following email dated 10 February 2021. Whilst I accept that the latter correspondence was not received, the Council attempted to inform the applicant of the reasons for the delay in the determination of the application. I therefore do not consider that the Council has delayed a development that should clearly have been permitted.

10. It is suggested by the applicant that the Planning Officer provided incorrect information to the Committee, referring to a layby at the site entrance. I accept this is inaccurate, it may appear to be a layby but it forms an area of hardstanding which was part of the airfield runway. In any event, this issue was not determinative in the consideration of the application and was not prejudicial in the determination of the case.
11. There is no evidence before me to suggest that the Council did not follow the appeal procedure, including the submission of suggested conditions should the appeal be allowed.
12. The applicant raises issues regarding the voting process at the Committee. This is not a matter for me to consider as part of this appeal. The applicant could take this further through other processes.
13. I have had regard to Planning Practice Guidance which advises that in a case where a local planning authority has failed to determine an application within the time limits, and the appeal is subsequently allowed, costs could be awarded if there are no substantive reasons to justify the delay and better communication with the applicant would have enabled the appeal to be avoided altogether. In this case, the Council attempted to contact the applicant to explain the delay and request a short extension of time but unfortunately this was not received. Having regard to the timescales involved between the correspondence being sent and the appeal being submitted, I consider that in this case, there was little chance of the appeal being avoided.
14. I have found that the Council has complied with procedural requirements, did not prevent or delay an application that should have been approved and did not fail to determine similar applications in a consistent manner. In my view therefore, unreasonable behaviour has not been demonstrated

### **Conclusion**

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application for an award of costs is refused.

*Helen Hockenhull*

INSPECTOR