

Costs and Decisions Team
3F Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5601
Customer Services: 0303 444 5000
e-mail:

Mr Adebayo
Planandbuild
6 Milburn Close
Luton
LU3 4EH

Your Ref:

Our Ref: APP/B0230/W/16/3149711
Date: 18 August 2016

By e-mail only

Dear Sir

**Appeal by Mr Adil Quazi
Land at 1 Curzon Road, Luton
Late Application for Costs**

This letter informs you of the decision taken in this office on your request to have a late costs application considered by the Secretary of State. The application is made against Luton Borough Council.

The Costs & Decisions Team wrote to you on 3 August 2016 notifying you that the costs application was late in accordance with the published guidance contained in paragraph 035 Section 16 of DCLG's Planning Practice Guidance (PPG). This explains that for appeals dealt with by way of the written representations procedure a costs application will be treated as late if it is received after the Planning Inspectorate's deadline for final comments. In this case, the Planning Inspectorate's 'start date' letter of 9 June 2016 set a deadline date for final comments of 28 July 2016, but your client's costs application was not received until 2 August 2016 after the period allowed for applying. You have set out your reasons why the costs application was not submitted earlier in your emails of 2 August and 4 August 2016 and they have been carefully considered.

Conclusions

It appears that you were waiting to receive the Council's appeal case before deciding whether there were sufficient grounds for claiming unreasonable behaviour against them. When it became apparent that the Council had not submitted a rebuttal statement, you contacted the Planning Inspectorate at the first opportunity (1 August) to seek clarification on how to proceed and you were advised to submit the costs application in the absence of the Council's statement.

The Secretary of State accepts that the Council did not submit a written statement of case in support of their decision to refuse the appeal application. However, as explained in the Planning Inspectorate's start date letter of 9 June 2016 there is no obligation on them to do so. The Council can rely on their appeal questionnaire if it provides full details of their case. In the event, the Council confirmed in their appeal questionnaire (Question 21) that was sent to you on 16 June 2016 that they would not be submitting an appeal statement for

this case. Consequently, the view is taken that having been informed by the Council that they would not be presenting any further evidence in support of their case on appeal the onus was on you to have submitted your client's costs application by the deadline date of 28 July 2016 for final comments in accordance with the stated timescales allowed for applying for costs as clearly set out in the PPG.

Furthermore, it is evident from the start date letter that if the Council were going to submit a statement they must do so by 14 July 2016¹. The view is therefore taken that, in the absence of receiving the Council's statement by the stated period, or shortly after, you would or should have been aware prior to the final comments stage of 28 July 2016 that the Council had not provided any further evidence in support of their case on appeal. It is therefore considered that you took a risk regarding the acceptability of a late costs application by waiting until after the deadline date for final comments had passed before submitting your client's costs application. While it is noted that you did contact the Planning Inspectorate on 1 August for advice regarding the non-receipt of the Council's statement, by that time the deadline date for the submission of a costs application had already expired.

You do not contend that you were not aware that the deadline date for making a costs application in this case was 28 July 2016. And the Secretary of State is satisfied that you would or should have known of the correct timescale for applying for costs from the relevant published guidance on costs contained in the PPG that was brought to your attention in the Inspectorate's start date letter of 9 June 2016.

Although the Secretary of State does have a discretionary power to accept a late costs application, he will only do so if good reason can be shown for not applying at the right time. This is the appropriate test as clearly set out in paragraph 035 of the PPG. In exercising that discretion he needs to be fair, and be seen to be fair, to both principal parties within the context of the principles stated in the published planning practice guidance on costs. In the light of the reasons stated above, the Secretary of State has decided that you have failed to demonstrate that there is 'good reason' for accepting this late costs application for his consideration. While I appreciate that you and your client will be disappointed with this decision, I regret that no further action can be taken on it.

A copy of your costs correspondence and this decision has been sent to Luton Borough Council for their information.

Yours faithfully

S Parsons

STEVE PARSONS

Authorised by the Secretary of State
to sign in that behalf

¹ The start date letter confirms that any documents sent after the deadlines set will normally be returned