

Costs Decision

Site visit made on 20 September 2016

by C. Jack, BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 4TH October, 2016

Costs application in relation to Appeal Ref: APP/Z3825/W/16/3151456 Ling Heath, Common Hill, West Chiltington, West Sussex, RH20 2NR

- 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. Craig Lee of Denton Homes Ltd. for a full award of costs against Horsham District Council.
 - The appeal was against the refusal of planning permission for the demolition of the single storey extension to the rear of Ling Heath. The erection of 3 family houses with associated landscaping, parking and access.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. The application for costs essentially relied on behaviour by the Council during the process of the appeal. This included that the Council failed to provide the applicant with copies of its initial documents in relation to the appeal in a timely manner, despite efforts on behalf of the applicant to contact the Council to obtain the documents. The applicant also states that he did not receive a statement of case from the Council or copies of any comments received from interested parties. The applicant considered that in the absence of these additional documents he was unable to submit final comments in the appeal by the relevant deadline of 13 September 2016.
 4. The applicant considered that as a result of the Council's inaction he suffered unnecessary or wasted expense in the appeal through the preparation of a statement of case that did not receive review by the Council, persistent attempts by his planning agent to contact the Council, calls to the Planning Inspectorate to establish the latest situation, and in taking advice with regard to the progress of the appeal.
 5. The Council says that it submitted its completed appeal documents to the Planning Inspectorate by email on 3 September 2016, following unspecified issues that prevented the documents from being successfully emailed on 2
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September 2016. It says it later emailed the documents to the applicant's planning agent at around midday on 12 September 2016.

6. The PPG states that examples of unreasonable behaviour by local planning authorities may include, lack of co-operation and delay in providing information¹, failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact that are unsupported by any objective analysis². Furthermore it states³ that costs can only be awarded in relation to unnecessary or wasted expense at the appeal.
7. While the Council did provide its initial appeal documents to the Planning Inspectorate in a reasonable time, it failed to copy these to the applicant in a timely manner, as would have been good practice. Indeed there was a delay of some five weeks before the applicant received the Council's initial documents, despite requests having been made to the Council to provide them. This delay was unreasonable in length, particularly as the Council would have had the relevant documents prepared as it previously been able to provide them to the Planning Inspectorate. It therefore amounts to unreasonable behaviour by the Council that it did not provide these documents to the applicant within the specified timeframe.
8. Nonetheless, the delayed documents principally included only information that would have already been available to the applicant in making the appeal. Accordingly, in this instance I am not persuaded that it has been clearly demonstrated that the delay in sending these initial documents resulted in unnecessary or wasted expense in relation to the appeal, albeit it would have been an inconvenience. A number of progress calls, including to the Planning Inspectorate, are likely to be a common part of the appeal process.
9. The Council chose to rely on its officer report to substantiate its position in the appeal. As a result there was no statement of case made by the Council for it to provide to the applicant. The officer report gave the Council's analysis and reasoning that the proposed development would be out of keeping with the character and appearance of the area and result in overlooking and loss of privacy with regard to specified neighbouring properties. The report provided substantiation of both reasons for refusal, including in relation to adopted development plan policies.
10. I accept that it was unfortunate that the Council indicated in its questionnaire that it would be submitting a statement of case, but ultimately relied on its officer report. I also accept that in not receiving documents as and when expected, the applicant would have been caused a degree of frustration and inconvenience, particularly upon reaching his deadline for final comments but having nothing further to comment on. However, notwithstanding that I came to a different conclusion to the Council on one of the main issues in the appeal, I am satisfied that it adequately substantiated its case at the appeal in regard to both reasons for refusal.

¹ Paragraph 047 Ref ID: 16-047-20140306

² Paragraph 049 Ref ID: 16-049-20140306

³ Paragraph 033 Ref ID: 16-033-20140306

The Council was therefore not unreasonable in relying upon its officer report in the appeal.

11. In addition, the Council advised that its officer report had been available on its website since the application was determined and it is clear that the applicant was aware of the report because extracts from it were included in his statement of case in the appeal. It was not mandatory for the Council to submit a separate statement of case, despite having indicated an intention to do so. Furthermore, the applicant would not have been led to unnecessary or wasted expense as a result of not needing to prepare final comments. Accordingly, I find no substantive evidence that in relying on its officer report the Council led the applicant to incur unnecessary or wasted expense in the appeal.
12. Moreover, it was not mandatory for the Council to submit comments on the applicant's statement of case. It would have been the applicant's choice to prepare a statement of case of the length and type submitted to substantiate his case in the appeal. A primary purpose of the statement would have been to set out his case for the benefit of the appointed Inspector. While the Council chose not to exercise its opportunity to comment on it, this did not amount to unreasonable behaviour on its part in this instance. In addition, no further comments from interested parties were received in relation to the appeal for the Council to copy to the applicant. Therefore, I am also not persuaded that these factors led the applicant to unnecessary or wasted expense in the appeal.
13. I therefore conclude that, for the reasons set out above, unreasonable behaviour has not been demonstrated in relation to the Council's reliance upon its officer report and in not providing comments on the applicant's statement. However, unreasonable behaviour by the Council has been demonstrated in relation to the length of delay in providing its initial appeal documents to the applicant. Nonetheless, it has not been clearly demonstrated that this directly resulted in unnecessary or wasted expense during the appeal process. For this reason, and having regard to all matters raised, an award of costs is therefore not justified.

Catherine Jack

INSPECTOR