
Costs Decision

Site visit made on 4 October 2016

by Alexander Walker MPlan MRTPI

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

Decision date: 24th October 2016

Costs application in relation to Appeal Ref: APP/E5330/W/16/3154320 37 Kidbrooke Grove, Kidbrooke, Greenwich SE3 0LJ

- 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 Iain Abrahams for a full award of costs against Royal Borough of Greenwich 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 demolition of an existing garage and the construction of a two storey side and single storey rear extension.
-

Decision

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

Reasons

2. Planning Practice Guidance 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 was made in writing at the appropriate time and relates to the unnecessary expense incurred by the applicant in being forced to pursue an appeal in circumstances where the Council should have determined the application within the prescribed period, avoiding the necessity of lodging an appeal against non-determination and the costs the applicant incurred.
 4. The application was submitted in February 2016 and validated shortly after. Despite the Council confirming that the Committee report had been drafted in June 2016 it was not presented before the Committee until the appeal against non-determination was lodged in August 2016. On numerous occasions the Council informed the applicant that the application would be presented on various Committee dates; however, to no avail. No explanation as to why the application was not presented to Committee was given to the applicant other than due to staff shortages and an impending Mayoral election. However, even when the Mayoral elections had passed, the application was still not presented to the Committee. There is no suggestion that the Council were awaiting further information from the applicant or any other interested parties. Essentially, the applicant had to lodge an appeal against non-determination to secure a decision. In preparing and lodging the appeal, they were put to expense.
-

5. National Planning Practice Guidance (PPG)¹ provides that in any appeal against non-determination, the Council should explain their reasons for not reaching a decision within the relevant time limit and this the Council has not done. On this basis it is clear to me the Council had no satisfactory reason not to present the proposal to the Committee, and subsequently determine the application, within the period of time between the submission of the application and the applicant lodging the appeal.
6. The PPG also advises that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs if the Inspector concludes, as I have done, that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
7. However, the nub of the argument is whether and to what extent the Council's unreasonable behaviour has resulted in unnecessary expense. Whilst the officer's recommendation to the Committee was for approval, when the proposal was presented to Committee following the appeal being lodged, its resolution was that the proposal would have been to refuse the application. Therefore, on the evidence before me, it is clear that the Council would have refused the application eventually, for the reasons that informed the issues in the parallel appeal decision. Although the applicant would have been unaware of the Council's objections before it produced its Statement of Case, once issued he was faced with an option. He could either pursue the appeal against the objections, or, he could have conceded on the basis of the objections and withdrawn the appeal, without incurring further costs.
8. The applicant chose to pursue the appeal against a decision which the Council would have eventually made. The Council's case is complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would conflict with. Whilst I appreciate that the appellant does not agree with the Council's case, its objections to the proposal are not unreasonable.
9. Whilst there were no substantive reasons to justify delaying the determination of the application I do not see how better communication with the applicant would have enabled the appeal to be avoided altogether. Notwithstanding the Council's unreasonable behaviour, the applicant's costs were a matter of choice and those that should normally be expected when lodging an appeal. They are not, therefore, considered as unnecessary expense.
10. In summary, the Council was unreasonable in a number of areas and the applicant did incur costs in achieving a 'decision', albeit not the one they desired. However, by not accepting the Council's 'decision', and pursuing their appeal, it reverted back to the conventional appeal scenario where each party is expected to meet its own costs. Thus, I find that in the application for a full award of costs by the applicant against the Council is not justified.

Alexander Walker

INSPECTOR

¹ ID16-048-20140306: National Planning Practice Guidance