

Costs Decision

Site visit made on 21 September 2016

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 1st November 2016

Costs application in relation to Appeal Ref: APP/Q5300/W/16/3152918 Lindale Nurseries, Cattlegate Road, Enfield, EN2 9DP

- 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 Rod Thompson for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of an agricultural storage building for the storage of farm machinery and hay made on the land.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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 or wasted expense in the appeal process
 3. The appeal is against the failure of the Council to issue notice of their decision within the prescribed period. The Planning Practice Guidance advises that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
 4. The Planning Practice Guidance also advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably failing to determine planning applications, or by unreasonably defending appeals.
 5. Whilst the Council set out in its evidence a putative reason for refusal, it offered no explanation why the planning application was not determined within the relevant time limit. The appellant has submitted evidence, which is not challenged by the Council, which indicates that the Council were minded to grant planning permission, but simply failed to do so.
 6. The Council did not submit any evidence that would explain its change in position between the correspondence with the appellant in April 2016, which indicated support for the proposal, and the submission of its Appeal Statement in August 2016 which resists the appeal. The Planning Guidance states that a substantive award of costs may arise from vague, generalised or inaccurate
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assertions about a proposal's impact, which are unsupported by any objective analysis. I found little in the Council's evidence by way of an objective analysis of the impact of the proposed development and whilst reference was made to other appeal decisions these related to developments of a different nature, that were inappropriate development, and not analogous to the appeal case.

7. The appellant has consequently incurred unnecessary expense in having to pursue the appeal which could have been avoided.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Enfield shall pay to Mr Rod Thompson, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 3 of this letter.
10. The applicant is now invited to submit to the Council of the London Borough of Enfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Dowsett

INSPECTOR