
Costs Decision

Site visit made on 3 October 2016

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 15 November 2016

Costs application in relation to Appeal Ref: APP/T5720/W/16/3153298 Land to the rear of 34 Coombe Lane, Raynes Park, London SW20 0LA

- 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 Raynes 11 Limited for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for minor alterations to ground floor of building to improve circulation, secure bin store and cycle storage and car parking/drop off provision.
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Decision

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

Reasons

2. Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may 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 appellant submits that the local planning authority acted unreasonably as they failed to determine the application within the statutory time frame and that no substantive reason exists or indeed has been communicated to the appellant, to justify the delay in determination. Furthermore they submit that the Council has not provided any substantive evidence during the appeal process to explain why planning permission would not have been granted had the application been determined within the relevant period.
 4. Planning Practice Guidance indicates that the local planning authority may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify the delaying the determination and better communication with the appellant would have enabled the appeal to be avoided altogether.
 5. The Council state that they did not determine the application because the situation on site did not reflect the proposed drawings and Officers were concerned that the proposed changes were not acceptable and indeed were not capable of being provided.
 6. During the application process there was some communication between the Council and the appellant's agent regarding access to the bins, cycle store and
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parking area. The appellant responded to these matters and despite requesting further updates on the proposals received no further communication from the Council. Furthermore, I have not been provided with any evidence that the Council advised the appellant's agent that the drawings were inaccurate or requested any further information or clarification from the appellant on aspects of the scheme which remained a concern to them. No indication was given to the appellant that the Council would not be able to determine the application within the statutory time period, nor was an extension of time requested.

7. Despite the Council stating that the application was not determined to allow the appellant to progress matters to a satisfactory outcome, it was not made clear to the appellant exactly what he was required to do to further support the application. During the appeal process the Council have not provided any substantive evidence to demonstrate why the appeal proposals are unacceptable or how they would conflict with the development plan, national policy and any other material considerations.
8. The failure to determine the application without providing any substantive reasons to justify delaying determination and failing to communicate effectively with the appellant therefore constitutes unreasonable behaviour. This is contrary to advice set out in the Planning Practice Guidance and the appellant has been faced with the unnecessary expense of lodging an appeal.

Conclusion

9. I therefore conclude that unreasonable behaviour by the Council resulting in unnecessary expense, as described in Planning Practice Guidance has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 for the London Borough of Merton shall pay to Raynes 11 Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council for the London Borough of Merton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR