
Costs Decision

Site visit made on 25 October 2016

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 23 November 2016

Costs application in relation to Appeal Ref: APP/Q5300/W/16/3156327 43 Laburnum Grove, Southgate, London N21 3HT

- 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 George Zigras 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 planning permission for erection of a detached 3 bed family dwelling.
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Decision

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

Reasons

2. Paragraph 30 of the National Planning Practice Guidance (the 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 or wasted expense in the appeal process.
 3. Paragraph 49 of the Guidance sets out examples of unreasonable behaviour by local planning authorities, including failure to provide evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective assessment.
 4. The appellant stated that the local planning authority failed to determine the planning application within the prescribed period. As a result, the appellant has made an appeal on the basis of non-determination. The appellant claimed that the Council acted unreasonably to cause unnecessary or wasted expense as, in their view, the Council was in a position to determine the application within the statutory period, particularly given that a previous outline application for the proposal was submitted and refused only on affordable housing grounds, which are no longer relevant due to a change of policy. Furthermore, the appellant stated that the lack of a tree survey as grounds for refusal amounts to unreasonable behaviour as it is a new reason which was not considered in relation to the outline application.
 5. The Council argued that during the 8-week statutory period, the appellant was engaged verbally with a request for further details pertaining to an Arboricultural Impact Assessment (AIA) of trees at the appeal site and the neighbouring site. This request was made in order to allow the Council to undertake a full assessment of the impact of the proposal. The Council stated that such details were not provided and that subsequently the appellant lodged an appeal for non-
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- determination. The Council has indicated it would have refused the proposal due to insufficient information provided to assess the application.
6. It seems to me that the material consideration of the impact of the proposal on the nearby tree came to light after the detailed proposal was submitted. The appellant had not indicated on the application form that the proposal may have a potential impact on the tree. Therefore, I consider that such a consideration would not have been apparent in an initial assessment of the application. The Council stated that it made contact with the appellant during the statutory period and on 11 August 2016 requesting additional information from the appellant in relation to the impact of the proposal on the tree. The appellant stated that no formal request from the Council had been received. However, I have seen no substantive evidence from either party to support these points.
 7. From what I have seen and read, it is apparent that the Council is under significant pressure to determine applications in a timely manner and that this is having an impact on the efficient determination of proposals. Notwithstanding this, given my findings above regarding the initial assessment of the application and that the application form did not indicate the potential impact of the proposal on the tree, I am satisfied that once the matter had been identified, the Council made it known to the appellant at the earliest opportunity, which it stated that it did verbally.
 8. In the likelihood that the request for additional information would require more time to properly consider the application, the Council could have sought an extension of time with the appellant. Whilst this would appear to be a reasonable approach, this would be a matter for the Council and appellant to resolve. However, I note that communication between the Council and the appellant appears to have been less than anticipated in this case. In any event, the requested information was not submitted.
 9. Notwithstanding this, I find that the appellant has a responsibility to ensure that the appropriate evidence is submitted with a planning application to allow the Council to reasonably determine a proposal. In this case, I find that the appellant could reasonably have been expected to consider Policy DMD80 of the Enfield Development Plan Document 2014, indicate any potential impact on nearby trees on the application form and provide the appropriate assessment.
 10. Based on the evidence before me, I conclude that the Council has not acted unreasonably in seeking further information with regard to the potential impacts of the proposal which came to light during the application process. Whilst I appreciate that the application was not determined within the statutory period and that this has been frustrating for the appellant, the absence of the relevant information, despite requests to the appellant to provide it, has led to the Council being unable to properly assess the proposal. As a result, I conclude that, in these circumstances, the Council acted reasonably and would have made a clear and justifiable decision based on the information available at the time.

Conclusion

11. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Consequently, the application for an award of costs is refused.

Andrew McCormack

INSPECTOR