
Costs Decision

Site visit made on 7 November 2016

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 5 December 2016

Costs application in relation to Appeal Ref: APP/N5090/W/3156230 54 East View, Barnet EN5 5TN

- 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 Ben Davies for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for part single, part two-storey side, rear and front extensions. Roof extensions involving 2No rear dormer windows, 2No rooflights to front elevation to facilitate a loft conversion. Raised patio level with steps to ground floor.
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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 or within the extended time period they had agreed following a request from the Council. Furthermore no substantive reason exists or indeed has been communicated to the appellant, to justify the delay in the determination.
 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 delaying the determination and better communication with the appellant would have enabled the appeal to be avoided altogether.
 5. During the application process there was some communication between the Council and the appellant's agent regarding the design and scale of the proposed development. The appellant responded to these matters and submitted revised proposals. However, despite the appellant agreeing to an extension of time for the determination of the application and numerous requests for an update on the applications progress, the Council failed to communicate further with the appellant or determine the application within the agreed extended time frame.
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6. Furthermore, during the course of the appeal I have not been provided with any evidence from the Council to advise why they failed to determine the application within the statutory time frame or indeed how they would have determined the application had they been in a position to do so. Moreover they have not provided any rebuttal to the application for an award of costs.
7. 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

8. 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

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 Barnet shall pay to Mr Ben Devons, 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.
10. The applicant is now invited to submit to the Council of the London Borough of Barnet, 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