
Costs Decision

Site visit made on 20 December 2016

by Michael Boniface MSc MRTPI

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

Decision date: 12th January 2017

Costs application in relation to Appeal Ref: APP/Z1510/W/16/3158483 Rivenhall Oaks Golf Centre, Forest Road, Witham, Essex, CM8 2PS

- 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 Simon Brice for a full award of costs against Braintree District 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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 PPG specifically identifies the risk of costs being awarded against a local planning authority where no substantive grounds justify the non-determination of a planning application within the statutory time period¹.
4. The application was made on 12 February 2016 and allocated a 13 week statutory target for determination of 13 May 2016. The Council was aware of the nature of the application throughout this period and the submitted e-mail exchanges demonstrate attempts to identify a professional lighting adviser as early as 15 February 2016, having acknowledged that the Council did not have the necessary in-house expertise. There are on-going e-mail exchanges for some time after this but by the time the appellant submitted his appeal, on 13 September 2016, no advice had been obtained and the application remained undetermined.
5. I have had regard to the Council's requirement to follow internal processes and the need to ensure that public funds are spent wisely and accountably. However, the internal processes of the Council (no details of which have been submitted) are no excuse for delaying the determination of a planning application for such a considerable period, particularly where no extenuating circumstances have been identified. Whilst there is nothing unreasonable

¹ PPG Reference ID: 16-048-20140306

about the Council seeking external advice, the significant delay of several months has not been satisfactorily justified.

6. Had the necessary professional advice been obtained earlier on the application process the appellant would have had the opportunity to consider the Council's position and discussions might have identified a mutually acceptable position that avoided the need for an appeal. In this case, the appellant waited a considerable length of time for the Council to decide the application and made contact several times in attempt to encourage dialogue and, ultimately a determination. It seems to me that by September, some seven months after making the application, the appellant had little choice but to appeal in order to receive a decision. The unsubstantiated delay in determining the application has clearly led to the need for an appeal and the costs involved.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Braintree District Council shall pay to Mr Simon Brice, 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.
9. The applicant is now invited to submit to Braintree District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Michael Boniface

INSPECTOR