
Costs Decisions

Site visit made on 13 March 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 23rd March 2017

Costs application in relation to Appeal A: APP/T0355/Y/16/3158644 47 Kings Road, Windsor, Berkshire SL4 2AD

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr M & Mrs K Corden for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for listed building consent for a three storey rear extension, reduction of lower ground floor front external store and alterations to fenestration.
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Costs application in relation to Appeal B: APP/T0355/W/16/3161288 47 Kings Road, Windsor, Berkshire SL4 2AD

- 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 M & Mrs K Corden for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - 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 a three storey rear extension, reduction of lower ground floor front external store and alterations to fenestration.
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Decisions

Costs A

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

Costs B

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

Reasons

3. The Planning Practice Guidance 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.
 4. The applicant has contended that the Council has behaved unreasonably in not determining the applications within the prescribed periods which has forced the applicant to resort to the appeal process and thereby incur unnecessary
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- expense. It is further contended that there was a lack of decisive responses from the Council and no clear indication of timescales was forthcoming.
5. The Council contend that at the time when the appeal was lodged discussions were on-going in relation to reasons for refusal and how an amended scheme could address the Council's concerns. The Council advise that reports for refusal were drafted and ready for despatch on the day the appeal was lodged and could have been issued at that point. The Council further contend that as the scheme stood it was wholly unacceptable and the decision would have been to refuse the proposals, which the appellant was aware of.
 6. The Planning Practice Guidance advises that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. 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.
 7. There is little evidence in either parties' comments and much is left to assertion. There does appear to have been a dialogue on-going but it is not clear how effective this was. The Council suggest that the appellant was fully aware of the Council's concerns regarding the proposals. The appellant does not appear to directly dispute this point. I have taken the reference to 'decisive answers' as relating to ways in which the application could have been made acceptable. The Council also claim that the reports and decisions were ready at the point the appeal was lodged; again this is not directly challenged by the appellant but I have no direct factual evidence as to the situation. On this basis I have not sufficient evidence to conclude on these grounds that the Council behaved unreasonably.
 8. The Planning Practice Guidance further advises that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
 9. In the case of these proposals the Council provided putative reasons for refusal supported by officer reports and which I found supported the concerns that were expressed; on this basis both of the appeals were dismissed. Given that there were substantive reasons to justify the decisions and there is no evidence to demonstrate procedural unreasonable behaviour I conclude that the Council have not acted unreasonably in relation to either appeal.
 10. Even where I to have concluded that the delay in decision making had been unreasonable it would have been necessary to establish that unnecessary expenses were incurred. A single joint appeal was submitted in respect of both appeals and therefore the expense was restricted to that submission. The appeals were dismissed and while costs do not follow the outcome of a substantive appeal the Council was able to demonstrate that it had substantive reasons to refuse the applications. In those circumstances the appellant would have been in a position of making an appeal had the decisions been issued in time and therefore would have had to incur the costs of making the appeal.

The reasons for refusal were also found to be justifiable. There were not therefore unnecessary expenses incurred in submitting the appeals.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in respect of either appeal.

Kenneth Stone

INSPECTOR