
Costs Decision

Site visit made on 9 May 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 25 May 2017

Costs application in relation to Appeal Ref: APP/P5870/W/17/3168980 First Church of Christ, Scientist, 42 Cheam Road, Sutton SM1 2SS

- 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 The Board of Directors, First Church of Christ, Scientist, for a full award of costs against the Council of the London Borough of Sutton.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition and development to provide a new D1 space on the ground floor and nine flats above with a retained car park and associated amenity space.
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Decision

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

Preliminary matters

2. It is not specified whether the application is for a full or partial award of costs. I have therefore considered the application on the basis that a full award is being sought.

Reasons

3. Paragraph 30 of the Planning Practice Guidance (PPG) 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 or wasted expense in the appeal process.
 4. Paragraph 033 states that *"all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded."*
 5. Paragraph 48 explains 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."*
 6. I have no evidence that a proper explanation was provided by the Council, within the time limits, as to why it would fail to determine the application,
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which was validated on 11 May 2016. The only response I have seen from the Council to a succession of emails from the applicant is dated 6 October 2016. This provides an apology for an "unacceptable delay" due to other workload pressures. Whilst I sympathise with the Council in this regard, this does not in my view amount to a "proper explanation" and in any case it is given significantly later than the time limit for the application.

7. No further explanation has been provided at appeal stage and the local planning authority has not provided reasons why permission would not have been granted had the application been determined within the relevant period. Nor have any responses been provided from statutory consultees. Whilst the Council has completed the appeal questionnaire and provided copies of development plan policies and the public consultation responses, this is an administrative aspect of the appeal process which does not in any way convey the Council's position. I therefore find that the above constitutes unreasonable behaviour on the part of the Council, contrary to the guidance in the PPG.
8. In terms of whether this has caused the appellant to incur unnecessary or wasted expense in the appeal process, it is reasonable to assume that the lack of any substantive engagement on the part of the Council to the decision making process, suggests a position of ambivalence towards the appeal proposal. If the Council felt strongly that planning permission should be withheld, it would have made this position clear. In the absence of any evidence to the contrary, or any response to this application for costs, the Council's silence leads me to conclude that, irrespective of my own findings, it does not object to the appeal proposal. On this basis the appeal could have been avoided.
9. Therefore, in order to receive a decision on the proposed development, the appellant has been faced with the unnecessary expense of the preparation of an appeal statement and lodging the appeal, using the services of a planning agent.

Conclusion

10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Sutton shall pay to the Board of Directors, First Church of Christ, Scientist, the costs of the appeal proceedings described in the heading of this decision.
12. The appellant is now invited to submit to the Council of the London Borough of Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Richard S Jones Inspector