The Planning Inspectorate

Costs Decision

Site visit made on 20 March 2017

by Graeme Robbie BA(Hons) BPl MRTPI

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

Decision date: 13 June 2017

Costs application in relation to Appeal Ref: APP/L5810/W/16/3165243
105 Church Road, Richmond TW10 6LS

- 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 London & District Limited for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
- 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 the erection of a two storey dwelling on land to rear of 105 Church Road; relocation of car parking to the forecourt and a new crossover onto Church Road.

Decision

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

Reasons

2. 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 the costs to incur unnecessary expense in the appeal process. It goes on to state that unreasonable behaviour may be either procedural or substantive in nature.

3. The Guidance also makes it clear that local planning authorities are required to behave reasonably in relation to procedural matters as the appeal. Examples of unreasonable behaviour which may result in an award of costs include a lack of co-operation with the other party or parties and delays in providing information or other failure to adhere to deadlines. Finally, the Guidance states that costs cannot be claimed for the period during the determination of the planning application but all parties are expected to behave reasonably throughout the planning process. In appeals against a failure to determine an application the Guidance states that the local planning authority should explain the reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had a decision been reached.

4. The appellant is critical of the Council for delays in responding to requests for updates and progress on the application and then, having indicated that such feedback would be provided, further detail in the provision of that feedback. Whilst I have some sympathy with the appellant and can appreciate that such circumstances are frustrating for all involved I am not persuaded that the Council have behaved unreasonably, or that the appellant has incurred unnecessary expense. From the evidence before me, it appears that the appellant's agent was appreciative of the case officer's attempts to keep them up to date and informed.

5. Moreover, it also appears to me that the decision to submit an appeal on grounds of non-determination was made in the knowledge that the Council had concerns regarding the proposal. The appellant's agent acknowledges as much in his e-mail of 14 December 2016 to the case officer and whilst the communication between the Council and the appellant may have been frustrating at times, I am not satisfied that this amounts to unreasonable behaviour.

6. There is no suggestion that the appellant's grounds for making an application for an award of costs relate to the Council's conduct in respect of the appeal. I am also satisfied that the Council set out fully their reasons why, had the application been determined within the relevant time period, it would have been refused, and there seems to have been acknowledgement on the part of the Council and the appellant that the proposal was heading towards an appeal in any event prior to the submission of the current appeal.

7. As a result, I cannot agree that the Council have acted unreasonably in this case. As such there can be no question that the appellant was put to unnecessary expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Graeme Robbie

INSPECTOR