
Costs Decision

Site visit made on 2 May 2017

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 20 June 2017

Costs application in relation to Appeal Ref: APP/Y3615/W/17/3166547 Cutt Mill House, Suffield Lane, Surrey, Puttenham GU3 1BG

- 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 Andrew Barnes for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for extension to existing house, providing additional bedrooms, wash house and media room.
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Decision

1. The application for a full 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. Unreasonable behaviour can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
 3. The PPG also advises that, where the local planning authority has failed to determine an application within the time limits, it should give the applicant a proper explanation and, in any appeal against non-determination, they 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 within the relevant period.
 4. In this case, the appellant argues that the Council acted unreasonably in failing to determine the application in an acceptable timescale, which meant that the appeal against non-determination was necessary.
 5. Prior to the submission of the appeal, the Council had not provided any indication as to why it did not determine the original planning application. Nor had it, until very late in the appeal proceedings, put forward any kind of case to explain what objection(s) it might have with the proposed development. Up until well into the determination of the appeal, neither the applicant, nor I, knew whether the Council would have been minded to grant or refuse planning permission. Accordingly, in order to obtain any kind of decision on their planning application, the applicant seemingly had little choice but to make their
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appeal. Therefore, owing their procedural failings, the Council have behaved unreasonably.

6. In order for an award of costs to be made, it must be clear that unreasonable behaviour has amounted to wasted expense. While the Council have submitted a rebuttal to this application for costs very recently, it is apparent from the applicant's statement that an initial period of communication during the determination of the planning application effectively ceased altogether. The period of time that had elapsed before the appeal against non-determination was submitted indicates to me that the applicant was hoping for positive engagement with the Council's officers. Had such engagement and better communication with the applicant been forthcoming, even if the Council had found the proposed development unacceptable, then I consider that it could have liaised with the applicant and thus reasonably enabled the appeal to be avoided altogether.
7. Moreover, the Council have introduced arguments in support of their case once the appeal proceedings were well underway. This has resulted in delays in issuing the decision and incurred additional expense to the applicant, who had to spend extra time in considering this late evidence. Overall, therefore, I consider that the applicant has incurred unnecessary and wasted expense in making, and during the course of, the appeal.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. I conclude that a full award of costs in this case 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 Guildford Borough Council shall pay Mr Andrew Barnes the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to Guildford Borough 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. 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.