
Costs Decision

Site visit made on 16 May 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 22nd June 2017

Costs application in relation to Appeal Ref: APP/A5270/W/16/3155780 38 Mattock Lane, West Ealing, Ealing W13 9NS

- 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 Philippe Lai for a full award of costs against the Council of the London Borough of Ealing.
 - 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 proposal described as "demolition of side rear extension and enlargement of house house involving a new frontage and raised the roof."
-

Decision

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

Reasons

2. The 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 costs to incur unnecessary expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
 3. The applicant asserts that the Council failed to determine the original planning application within the statutory deadline or a reasonable time thereafter, and that the Council failed to respond to numerous requests for an explanation for the delay. It is apparent from the evidence before me that the Council had failed to make a decision on the application for a significant period of time before the applicant lodged an appeal.
 4. The 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. It goes on to state that, 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.
 5. The Council has set out its reasons why the permission would not have been granted had the application been determined within the relevant period. However, no justification has been provided as to why the Council failed to determine the application within the statutory timescales, or indeed a
-

reasonable timescale beyond that. In the absence of any such justification and based on the evidence before me, I consider that the failure of the Council to justify the protracted period over which it failed to determine the application amounts to unreasonable behaviour.

6. Nevertheless, unreasonable behaviour alone is not sufficient for an award of costs. The unreasonable behaviour must have caused the party applying for costs to incur unnecessary expense in the appeal process. The Council is clear in its appeal submissions that, had it determined the application, it would have refused it. As such, it seems to me that the applicant would likely have submitted an appeal in any event. I find, therefore, that no unnecessary expense as a result of the Council's unreasonable behaviour would have been incurred.

Conclusion

7. For the reasons above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Jason Whitfield

INSPECTOR