
Costs Decisions

Site visit made on 19 June 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 18 July 2017

Costs application A in relation to Appeal Ref: APP/E5330/W/17/3172801 3-5 Tunnel Avenue, Greenwich SE10 0SL.

- 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 Linea SE10 Ltd for a full award of costs against the Royal Borough of Greenwich Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition of existing commercial buildings and construction of a 4-storey block of 23 Flats, of various sizes and types.
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Costs application B in relation to Appeal Ref: APP/E5330/W/16/3161025 3-5 Tunnel Avenue, Greenwich SE10 0SL.

- 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 Linea SE10 Ltd for a full award of costs against the Royal Borough of Greenwich Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition of existing commercial buildings and construction of a 4-storey block of 23 Flats, of various sizes and types.
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Decision

1. The applications for an award of costs are allowed in the terms set out below.

Reasons

2. The *Planning Practice Guidance* (the PPG) 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 or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses. However, it goes on to say in Paragraph 28 that: '*all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met*'.
 3. The aim is that local planning authorities should properly exercise their development management responsibilities and not to add to development costs through avoidable delay. Furthermore, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, 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.
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4. The applications for costs arise not only from the failure of the Council to determine the planning applications but its failure to confirm registration of the application subject of Appeal B. Beyond a letter requesting a Viability Assessment in relation to Appeal B, there appears to have been, despite repeated attempts on the applicant's part, no meaningful dialogue with the Council. The applicant argues that this and the failure to determine the applications within appropriate target dates left him no alternative but to pursue the appeals thereby incurring the associated additional expense.
5. The Council has made no direct response to the applications for an award of costs against it. In relation to Appeal A, neither the site notice or the newspaper advert were submitted with the Questionnaire which resulted in chasing emails being sent by the Inspectorate on the 18, 26 and 31 May 2017. In the processing of Appeal B the Council was late in the submission of its Questionnaire, causing further delay. Both Questionnaires indicated the Council's intention to submit a 6 week statement. However, none were received.
6. Following lodging of the appeals the Council has neither responded by the preparation of a Statement of Case nor has it, as is ordinarily custom and practice, indicated what decisions would have been made had the appeals not been lodged. Although a list of suggested conditions was supplied this followed a written request from the Inspectorate and was received late. The above represents unreasonable behaviour when neither the applicant, nor the Inspectorate was given any indication of the Council's position regarding an assessment of the proposals.
7. Whilst I can appreciate that correspondence from a busy planning department can at times fail, in this case the Council's virtual silence with regard to the submitted applications, left the applicant with no real alternative but to proceed with the appeals. Furthermore, I find it rather extraordinary that an appeal can be lodged and other than providing the Questionnaires and supporting documents some of which were late, there be no supporting information, no Statement and, indeed, no response to a claim for costs. In these circumstances, the applicant's decision to appeal against non-determination is quite understandable and the whole matter up to that point and beyond during the appeal process would seem procedurally indefensible on behalf of the Council.
8. Based on the foregoing, it is patently clear to me that the Councils actions, or rather lack of them, have been contrary to the good practice set out in the PPG. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a full award of costs is justified in both appeals.

Costs Order

9. In the 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 Royal Borough of Greenwich Council shall pay Linea SE10 Ltd, the costs of the appeal proceedings described in the heading of this decision.

10. The applicant is now invited to submit to the Royal Borough of Greenwich 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.

D. M. Young

Inspector