



Costs Decision

Site visit made on 31 July 2017

by Peter Rose BA MRTPI DMS MCMI

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

Decision date: 6th September 2017

Costs application in relation to Appeal Ref: APP/M1595/W/17/3172125 Land adjoining Thatched Cottage, Baker Street, Orsett, RM16 3LJ

- 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 Robert Lockwood for a partial award of costs against Thurrock Borough Council.
 - The appeal was against the failure of the Council to issue a notice of its decision within the prescribed period on an application described as: *'All reserved matters relating to previous outline approval to be applied for. Scheme consisting of 8 No. 4 bedroom detached properties with attached garages and 1 No. 4 bedroom property with attached car port and detached single garage'* (and submitted pursuant to outline permission Ref: 14/00912/OUT).
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Decision

1. The application for a partial award of costs is refused.

The submissions for Robert Lockwood

2. The applicant's case is that the Council should have declined to entertain the application as not being within the ambit of the outline permission at the outset of submission. An appeal could therefore have been put forward at a much earlier stage and the principle of the Council's concern tested. Instead, it allowed detailed negotiations on the reserved matters to continue up to the point where it was ready to issue a decision. At that stage the Council's solicitor objected and no determination was made. An appeal was then lodged against the failure to determine.
3. Had the application originally been declined at the outset, the expense of the negotiations would not have been incurred. It is this wasted cost for which a partial claim is made.

The response by Thurrock Borough Council

4. Whilst the Council refers to its decision to initially validate the application as regrettable, it rejects the suggestion that it acted unreasonably, and maintains that it sought to work openly with the applicant throughout the processing of the submission.

Reasons

Background

5. The *Planning Practice Guidance* (the *Guidance*) sets out various advice regarding the circumstances in which costs may be awarded¹. It states that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. It explains that awards against local planning authorities may be either procedural in relation to completing the appeal process, or substantive in relation to the planning merits.
6. The *Guidance* identifies a range of possible circumstances in which an award of costs may be made against a local planning authority. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
7. If it is clear that the local planning authority will fail to determine an application within the relevant time limits, the *Guidance* states that the Council 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 required period.
8. It further explains that, if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the applicant in causing or adding to the delay.
9. The *Guidance* further advises that where a local authority has exercised its duty to determine an application in a reasonable manner, it should not be liable for an award of costs.

Findings

10. The application was submitted in March 2016 and accepted by the Council as valid, and several months of negotiations then followed involving the authority and the applicant in order to achieve an acceptable submission.
11. In September 2016, however, the authority advised the applicant that it was unable to determine the application as submitted², principally as the description of the development in the original outline permission did not conform to the description of the submitted reserved matters. Prior to its advice in September, a suggestion was made by the Council to the applicant that a full application would be a more appropriate way to proceed³. This advice was not followed, but I find the authority still sought to process the submission as made and appears to have been generally supportive of the applicant in progressing his proposal in the form submitted.

¹ See, in particular, paragraph: 030 Reference ID: 16-030-20140306, and accompanying paragraphs 031, 046, 048, 049 and 050

² See email dated 9 September 2016

³ See email dated 26 April 2016

12. I find the authority was correct in its view reached in September that the submission could not be determined, albeit for slightly different reasons. The Council's view only appears to have been reached following belated legal advice and not at the point of validation, and I accept the authority found it had no choice at that subsequent point other than to decline to determine. This represented a substantive reason why the application could not go forward.
13. The *Guidance* explains that costs cannot be claimed for the period during the determination of a planning application⁴, but 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.
14. The situation reached in September was both regrettable and disappointing to the applicant. Nevertheless, the chronology of events and records of dialogue between the parties do not suggest to me that the Council's actions had in any way been unreasonable up until that point. Notwithstanding its reservations regarding the form of the submission, the authority does not appear to have been obstructive, discussions appear to have been on-going to progress the scheme, and the applicant will have been aware as to why a decision could not have been reached within the statutory period.
15. There was, however, considerable delay on the part of the Council between accepting the submission as valid and formally advising the applicant to the contrary following receipt of legal advice, and I can appreciate the frustrations of the applicant. Even so, the Council recognised it was wrong in its original decision to validate the application and acted accordingly. Notwithstanding its previous reservations regarding the original form of the submission, that initial decision also reflected a matter of genuine planning judgement and was consistent with the service expectations of the applicant at that time.
16. On balance, whilst the Council's original assessment was flawed and undoubtedly delayed the subsequent appeal, I am satisfied that the authority behaved reasonably throughout the planning process.

Conclusion

17. I therefore consider that unreasonable behaviour on the part of the authority resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the *Guidance*, has not been demonstrated. Accordingly, I conclude that an award of costs is not justified in this instance and the application is refused.

Peter Rose
INSPECTOR

⁴ Paragraph: 033 Reference ID: 16-033-20140306