
Costs Decision

Site visit made on 14 November 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 6th December 2017

Costs application in relation to Appeal Ref: APP/Q1445/W/17/3179086 77 Holland Road, Hove BN3 1JN

- 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 Bacon (c/o Perth Securities) for a full award of costs against Brighton & Hove City 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 demolition of existing Choice Vehicle Rental workshop and erection of new basement and ground level offices and 9 apartments over with associated car parking and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance ('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 expense in the appeal process.
3. Paragraph 048 of the PPG highlights that local authorities may be at risk of an award of costs where there are no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided. Although the PPG says that 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, it makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, during the process by which the Inspector's decision is reached.
4. The appellant contends that they have sought at length to engage with the Council and that because of a lack of engagement, the appellant was left with no alternative but to submit an appeal. The application is dated 24 February 2017 and had a statutory determination date of 2 May 2017. On the evidence before me, comments on heritage issues were forwarded to the appellant on 26 April 2017 and this was followed by an email on 29 June 2017 which appears to be following the receipt of revised plans which sought to address the comments.
5. It is clear that the Council had concerns regarding the proposals and it was the appellant's choice to appeal against the non-determination of the application instead of continuing to work to address these concerns. Nevertheless, there is

little before me to demonstrate why the Council were unable to make a decision on the application. Therefore, I appreciate the appellant's frustration by the Council's failure to determine the application and not engage until so close to the statutory decision date. Without any evidence to the contrary the Council appears to have acted unreasonably in this regard. However, for costs to be awarded unreasonable behaviour must also have resulted in unnecessary or wasted expense.

6. Although the Council did not issue a decision and the appellant lodged the appeal against non-determination on 29 June 2016, it is apparent that an appeal was necessary in the face of the Council's clearly-stated objections. The Council have also adequately explained why permission would not have been granted had the application been determined within the relevant period and it is not the case here that the appeal could have been avoided.
7. I have found that the Council had reasonable concerns regarding the main issues and furthermore, there is no evidence to suggest that agreement could have been reached on these, or other matters. In this particular case, an appeal was inevitable. Thus, although the delay in determination should not have occurred I do not find that the appellant was caused unnecessary or wasted expense, despite the Council's unreasonable behaviour in not engaging earlier in the process and by not providing a satisfactory explanation as to why the application was not determined.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason an award of costs is not justified.

Richard Aston

INSPECTOR