



Costs Decision

Site visit made on 24 June 2019

by J M Tweddle BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Costs application in relation to Appeal Ref: APP/P4605/W/19/3223592 Land on the corner of Felstone Road & Howley Avenue, Birmingham B44 9AB

- 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 Ms Angela Witton for a full award of costs against Birmingham 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 outline planning permission for the erection of 1 dwellinghouse.
-

Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. The application for a full award of costs is on the basis that the Council failed to determine the planning application within the statutory timescale and that the application remained undetermined for several months beyond this statutory period without explanation. The applicant suggests that this left them with no alternative other than to appeal against non-determination.
4. Planning Practice Guidance indicates that a local planning authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance states that if the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay. Where this leads to an appeal against non-determination, they should also explain why permission would not have been granted had the application been determined within the relevant period.
5. The Council acknowledged receipt of the application on 10 September 2018 confirming that the application was valid from 6 September 2018 and advising that a decision was due by 1 November 2018, the statutory deadline. The applicant's agent emailed the Council on 16 November 2018 to request an update on the progress of the application. The Council responded on 19 November 2018 advising that significant staff shortages had led to a backlog of work extending determination dates by many weeks/months beyond

the statutory deadline. The Council Officer was unable to offer a timescale for the determination of the applicant's application but advised that applications were being dealt with in order. A further email was sent by the applicant's agent on 12 February 2019 seeking a further update on the progress of the application. It appears there was no response to this email and subsequently the applicant submitted an appeal on 27 February 2019.

6. The Council's failure to determine the application is a matter of serious concern and in this case has fallen significantly short of nationally prescribed expectations. The Council initially advised the applicant's agent that it was experiencing 'significant staff shortages' that had delayed determination dates by a number of weeks/months. A further period of over three months passed following this initial correspondence without the application being determined nor any further contact from the Council despite the applicant's agent seeking further updates. This further period of unexplained delay is unacceptable, and I consider this to amount to unreasonable behaviour by the Council during the procedure leading up to the appeal.
7. During the appeal process the Council provided a timely and comprehensive explanation as to why it considered the proposed development to be unacceptable and thereby indicating why it would have refused planning permission. I am therefore satisfied that the Council fully cooperated, in a timely manner, throughout the appeal process.
8. I turn then to the matter of unnecessary or wasted expense. The appellant submitted a short Statement of Case which largely includes copies of email correspondence between the appellant's agent and the Council in the lead up to the appeal. The appellant did provide final comments in response to the Council's statement in the form of a short email, however, this response is straightforward and has involved no further assessment, or indeed anything beyond a short rebuttal of the Council's position. It appears to me that, in reality, there has been so little extra work, as a result of the appeal, that it can be regarded as 'de minimis'. In fact, the appellant has quickly and succinctly responded to the Council's case without wasting expenditure.
9. As a result, although I find that the Council acted unreasonably in its handling of the planning application, it has not caused unnecessary or wasted expense. Therefore, an award of costs is not justified.

Jeff Tweddle

INSPECTOR