



Costs Decision

Site visit made on 16 July 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2019

Costs application in relation to Appeal Ref: APP/A5270/W/19/3227458 4 Ealing Road, Northolt, UB5 5HT

- 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 SMC Investcorp Ltd 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.
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Decision

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

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 expense in the appeal process.
3. The applicant contends that the Council failed to provide evidence to substantiate each reason for refusal on appeal. They also contend that they refused to provide reasonably requested information when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed. Furthermore, it is suggested that the Council failed to review their case promptly following the lodging of an appeal, as part of sensible on-going case management.
4. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. The PPG states 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 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.
5. As part of the appeal the applicant submitted copies of e-mail correspondence with the Council, which were exchanged at pre-application and planning application stage, which mainly focused on matters of design and heritage. As a result of the correspondence at planning application stage, I sense frustration on the applicant's part due to the advice of the Council, and the length of time taken to provide it. The most recent e-mail correspondence did, however,

- make it clear that the Council would not be able to support the proposal and were minded to refuse the planning application.
6. I am not clear why the application was not subsequently refused planning permission. However, it is put to me by the Council, and not contested by the applicant, that a revised Heritage Statement was submitted during the planning application process in order to address the Council's concerns relating to the initial submission. Therefore, it seems to me that the delay in determining the application was, at least in part, due to the applicant preparing and submitting an additional Heritage Statement while the application was still being considered.
 7. Moreover, before the planning application was submitted, the appeal site was the subject of a pre-application enquiry, which was responded to by the Council, albeit based on a slightly different residential scheme. Within this response, design and heritage matters were highlighted as important considerations. Similar concerns were then raised by the Council during consideration of the planning application. It was abundantly clear from the outset and from the correspondence that followed when the application was submitted that design and heritage matters were a key consideration in the determination of the proposal.
 8. Nevertheless, after failing to determine the application within the prescribed period, I share the applicant's frustrations that the Council did not provide an appeal statement setting out their position in relation to the appeal scheme, nor did they submit a response to the applicant's statement of case. It was necessary for the applicant to pursue their appeal case based on conjecture, having regard to previous discussions and correspondence with the Council. Furthermore, the Council have not properly explained why planning permission would have been refused. In this regard, the Council behaved in an unreasonable manner which convoluted the appeal process.
 9. The applicant's statement of case made it clear that their appeal was predicated on the narrow area of dispute between the parties, which stemmed from the pre-application and planning application correspondence, relating to design and heritage matters. Despite the Council's lack of evidence to support their appeal, I am satisfied that the pre-appeal correspondence between the parties was sufficient to ensure that the applicant was aware of the Council's concerns.
 10. As I also found the proposal unacceptable for the design and heritage reasons set out in my decision, and having regard to the extensive and unresolved correspondence that took place between the main parties, it seems unlikely that this appeal could have reasonably been avoided altogether.
 11. Having regard to the foregoing, the applicant has not demonstrated how the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense during the appeal process. It does not follow that just because a party has behaved unreasonably, it means that a costs award will follow. In this case, the applicant was clearly aware of the matters in dispute, and I do not see any evidence to suggest that it led to unnecessary or wasted expense in the appeal process.

Conclusion

12. Taking all of the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case and that an award of costs is not justified.

Matthew Woodward

INSPECTOR