



Costs Decision

Site visit made on 4 June 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Costs application in relation to Appeal Ref: APP/X0415/W/19/3220949 Rear of 14-16 Kings Lane, South Heath HP16 0QY

- 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 Dominic Killenger for a full award of costs against Chiltern District 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 planning permission for redevelopment of land to rear of 14-16 Kings Lane, construction of three dwellings with associated access, parking & landscaping.
-

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 an appeal, costs may only be awarded against a party who has behaved unreasonably and directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application essentially relies on two grounds; firstly that the Council failed to determine the planning application in a timely manner and secondly that there was a considerable delay in the Highway Authority's (HA) comments being published on the Council's website and shared with the applicant.
4. This resulted in a technical Access Statement having been prepared and submitted without the appellant having had prior knowledge of the HA's comments. It is also contended that despite the Access Report having apparently been submitted to the Council prior to the receipt of the HA's comments in September 2018, the HA did not take that document into account.
5. The applicant has not indicated whether the application is for a full, or partial, award of costs. However, as it is being contended that the appeal was unnecessary, I have treated it as an application for a full award.
6. The Council does not contest that, apparently as a result of staff turnover and resource pressures, delays occurred in the processing of the planning application. Whilst an Extension of Time was agreed, this was nonetheless breached without explanation and, according to the Council, a few weeks elapsed before the appeal was submitted.

7. Furthermore, the Council does not dispute that a delay occurred in making the Highway Authority comments available to the appellant.
8. Having regard to the advice of the PPG, the Council's failure to determine the application in a timely manner and to draw attention the HA's response amounts to unreasonable behaviour.
9. It is not clear from the submitted evidence the extent to which the HA took into account the appellant's Access Statement or even whether it had been provided with a copy by the Council at that stage.
10. Nevertheless, it is clear that, had the Council made a decision on the application, it would have refused permission. Furthermore, whilst I fully appreciate the applicant's frustration over the Council's unreasonable behaviour, I concluded in my decision letter that the appeal should fail in part on highway grounds. As such, even though the Council did not deal with the application in a timely manner, the appeal was in any event necessary.
11. Whilst the applicant is concerned that the Council's failure to publish the HA's comments left little opportunity to address the highway concerns, I note the appeal appears to have been lodged after the highway comments became known. There was, therefore, opportunity for the applicant to respond to the HA's comments prior to the making of the appeal if necessary. In this regard, I note that no further technical highways evidence was in any event prepared by the applicant at the appeal stage.
12. As a result, I find that whilst the Council acted unreasonably, this did not result in the applicant incurring any wasted or unnecessary expense.

Conclusion

13. For the above reasons, I conclude that whilst unreasonable behaviour on the part of the Council has been demonstrated, this did not result in unnecessary expense during the appeal process. Accordingly, an award of costs is not justified.

Ian Bowen

INSPECTOR