

Costs Decision

Site visit made on 18 June 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Costs application in relation to Appeal Ref: APP/E5900/W/18/3212649 Lattice House, 14-20 Alie Street, London E1 8GZ

- 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 Erman Mantoet of EMA architects ltd for a full award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a part 1 and 2 storey roof top extension to create No.8 units.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. Costs may be awarded to any party regardless of the outcome of the appeal. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal or with respect to procedural matters by 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.
3. The applicant submits that the Council has acted unreasonably by preventing or delaying development by failing to make a determination on the planning application within the statutory timeframe and it has also failed to fully substantiate its suggested reasons for refusal. The applicant further asserts that the Council failed to co-operate in agreeing the Statement of Common Ground (SoCG).
4. The application was registered on 13 March 2018 and the Council indicated what its decision would have been in its submitted Statement of Case (statement), but that was in excess of the target date for determination of the application, which was 8 May 2018. The applicant appealed on the grounds of the Council's failure to determine the application on 27 September 2018.
5. The Council gave an indication in its statement that it would have refused the application for planning permission on the grounds that the proposal would adversely impact on the character and appearance of the appeal site and surrounding area, including nearby listed buildings; living conditions of future and existing occupiers, and housing choice.

6. The Council has given substantial periods of unplanned leave and confusion surrounding the submitted daylight and sunlight data for its failure to determine the application within the relevant period. Whilst the personal circumstances surrounding the Officer were unfortunate, nevertheless the delay caused by the Council's failure to determine the application within the statutory framework was excessive and constitutes unreasonable behaviour, especially as no extensions of time were agreed. However, the indication is that had the decision been made in a timelier fashion it is likely that the applicant would have still had to appeal in any event.
7. Whilst I find the Council acted unreasonably through its failure to determine the application in a timely manner it has further supported their submission with a full statement. From the evidence before me, and in the absence of any additional information to the contrary, it follows that I am satisfied that the Council has shown that it was able to substantiate its suggested reasons for refusal. The Council's submission clearly identifies the issues, identifying the evidence both, for and against the proposal, and going on to clearly explain the reasoning behind its conclusion. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme. It follows that I am satisfied that the Council has shown that it was able to substantiate its suggested reasons for refusal. Furthermore, I do not accept the assertion that the Council acted unreasonably through the failure to agree to the SoCG, as the preparation of SoCG was unnecessary for an appeal following the written procedure.
8. It will be seen from the decision in the appeal that whilst not agreeing to all of the concerns raised, I reached a similar conclusion to the Council with regard to the impact of the proposal on the character and appearance of the appeal site and surrounding area, including the effect on the setting of nearby listed buildings; living conditions of future and existing occupants and housing choice. Having regard to this, while the Council acted unreasonably by delaying determination, it did not delay development that should have been permitted having regard to the policies in the development plan, national policy and other material considerations. While the Council's behaviour was unreasonable, it did not cause the applicant to incur wasted costs as the appeal was inevitable in any event.

Conclusion

9. On the basis of the evidence before me, I conclude that it has not been demonstrated that the Council's unreasonable behaviour caused unnecessary or wasted expense in so far as an award of costs could be justified. I therefore determine that the costs application should fail and no award is made.

W Johnson

INSPECTOR