
Costs Decision

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

**Costs application in relation to Appeal Ref: APP/G2815/W/19/3221237
Rushden Memorial Clinic (former) Hayway, Rushden, Northamptonshire
NN10 6AG**

- 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 Lawson on behalf of Centennial Partners LLP for a full award of costs against East Northamptonshire 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 the conversion and extension of the existing Memorial Clinic to create 12no. one and two bedroom flats, with shared amenity space and associated parking. Construction of two bungalows and associated parking within the grounds of the existing building.
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Decision

1. A partial award of costs is awarded.

Reasons

2. Planning Policy Guidance 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 appellant's claim principally relates to the time taken by the Council to progress the application prior to the appeal against non-determination, and what the applicant perceives as an un-cooperative approach on the Council's part.
4. The application was submitted in April 2018, the Council seeking an extension of time on 9 August and suggesting a number of changes to the proposal. Revised plans were submitted to the Council on 31 October, after which the Council carried out further consultation. At that time the Council informed the applicant that it aimed to take the application to the planning committee on 12 December and sought agreement to extend the period for determination to 19 December 2018.
5. The application was not included on the agenda for the December meeting and the applicant was informed that it would not be included on the agenda for the meeting in January 2019. The applicant was disappointed that the agreed extension of time to allow the case to be considered at the December committee meeting had not been adhered to.

6. The Council's response to the applicant stated that the matter had not been placed on the agenda for the December meeting because some consultee replies had been awaited, and effectively the agenda was already full. The application would be reported to February meeting and an extension of time was sought to 15 February 2019. The applicant decided to submit an appeal against the Council's failure to issue a decision within the period of the previously agreed extension of time.
7. The applicant considers that the Council has failed to deal with the application within agreed timescales and has not provided a satisfactory explanation of its reasons for so doing. The Planning Practice Guidance advises that the Government's view is that no application should spend more than a year with decision takers, including any appeal¹ - the planning guarantee.
8. The Council considers that it has been proactive in seeking to move matters forwards, and mentions that there had been pre application discussions which had identified some issues. The Council also says that some of the time prior to the failure to agree a further extension with the applicant arose between 9 August and 31 October 2018 whilst the Council awaited amended plans.
9. The applicant also considers that the Council has behaved unreasonably, through an uncooperative approach, for example not promptly sharing consultee responses, and feels that officers failed to make clear their position on the proposal. The Council's says that consultee replies were available on its website under the 'comments' banner, and that there is no evidence from discussions that officers suggested that the application would be recommended for approval.
10. In response to the Council's comments on the initial cost claim, the applicant introduced two further matters.
11. The first relates to the Council's concerns regarding the impact of the proposals on bats, the Council's fourth reason for which it would have refused the application. The applicant maintains that he has supplied the necessary protected species surveys and the Council should not have persisted in this objection. I agree that the matter was satisfactorily addressed during the application stage.
12. The applicant also states that the Council has failed to provide any reasons to support its objections on grounds of poor design, which forms the fifth reason for which it would have refused. The reason is self-explanatory in raising the flat roof extensions and the two bungalows to the rear as concerns and the Committee report dated 10 April gives some further explanation of the Council's objections, although brief. To that extent the Council has provided limited evidence to support its position on design.
13. The applicant has also referred to the Council having given weight to its own wishes to see the site developed for over 55s accommodation and being influenced by the existence of a covenant affecting part of the site. From the information I have before me I have no reason to conclude that either of these matters have a bearing on the Council's grounds for opposing the proposal.

¹ Paragraph 002 Reference ID: 21b-002-20140306

14. The Planning Practice Guidance advises that a planning authority may be at risk of costs where there were no substantive reasons to justify delaying the determination of the application, and better communication with the applicant may have avoided the need to appeal². Based on the information I have before me, I am unable to conclude that the Council has behaved unreasonably. Whilst the applicant is entitled to feel that matters could have been dealt with more speedily, it is clear that the Council did engage in discussions during the course of the application, suggested areas of concern, and was moving towards a decision when the applicant decided to appeal.
15. The PPG also advises that where a Council fails to produce evidence to substantiate reasons for refusal, it may be at risk of an award of costs³. The Council has provided no evidence to support its fourth reason for which it would have refused permission in relation the impact of the proposal on bats.
16. Therefore a full award of costs is not justified in this instance. However, for the reasons given above I find that the Council acted unreasonably in not providing any justification for its grounds in relation the impact of the proposals on bats and as a result the applicant was put to some unnecessary expense in preparing the case for appeal.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the East Northamptonshire Council shall pay to Mr Lawson on behalf of Centennial Partners LLP, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of his statement of case in relation to the issue of protected species; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to the East Northamptonshire Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Tim Wheeler

INSPECTOR

² Paragraph 048 Reference ID: 16-048-20140306

³ Paragraph 049 Reference ID 16-049-20140306