
Costs Decision

Site visit made on 6 August 2019

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Costs application in relation to Appeal Ref: APP/R5510/W/19/3229330 4 Ashburton Road, Ruislip HA4 6AD

- 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 Stanley for a full award of costs against the Council of the London Borough of Hillingdon.
 - 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 part two storey, part first floor side/rear extension, single storey front extension, first floor rear extension, conversion of roof space to habitable use to include 2 rear dormers and conversion of roof from hip to gable end, 4 detached garages to rear and conversion of dwelling from 1 x 4-bed to 1 x 1- bed and 3 x 2-bed self-contained flats with associated parking and amenity space.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 costs is made on the basis that the Council was unreasonable in failing to determine the application and failing to give a date by which it would be determined, such that the applicant was put to the cost of lodging an appeal against non-determination.
4. Paragraph 47 of the Planning Practice Guidance (PPG) sets out examples of unreasonable behaviour which may give rise to a procedural award of costs, including a lack of co-operation with the other party or parties and failure to adhere to deadlines.
5. Paragraph 48 of the PPG states that, 'If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period'.

6. The evidence before me indicates that the Council communicated with the applicant to advise that their application would have to be determined by the Planning Committee and provided proper reasoning. The applicant acknowledges this and does not dispute that the application had to be determined by the Planning Committee and was outside the officers' delegated powers. The applicant contends however, that following the expiry of the period for representations, no good reason was given not to report the application to committee meetings in April and May.
7. The statutory period for the Council's determination of the application ended on 9th April 2019 and the appeal was registered on the 22nd May 2019. The applicant states that no extension of time to the statutory period was sought and I have no information from the Council to indicate otherwise. Furthermore, there is no evidence before me of any subsequent communication from the Council in relation to any potential Committee date or to explain the ongoing delay in determining the application.
8. From what I have seen, after initial communication with the applicant, subsequent delays were less properly explained and the Council has failed to provide a statement of case that fully explains their reasons for not reaching a decision in a timely manner. In particular, I have no substantive information from the Council as to why the application was not reported to the first available Committee meeting. Consequently, the applicant would have had no indication of when a decision might be forthcoming. I consider that this was unreasonable behaviour on the part of the Council.
9. The Council has confirmed that it would have refused the application for two reasons. An officer report was only provided during the appeal. This sets out full and detailed reasons which identify both the harm alleged and the policies of the development plan that the Council considered there to be conflict with. The report substantiates these reasons against the background of the 2018 Appeal decision¹ for a similar scheme at the same site. It will be seen from my decision on the appeal that I agree with the Council and that there were sufficient grounds for refusing planning permission. It follows that I am satisfied that the Council has shown that it was able to substantiate its reason for refusal and I find no unreasonable behaviour in this regard.
10. Turning to the issue of unnecessary or wasted expense, the failure by the Council to determine the application or provide a timescale for determination led directly to the applicant submitting the appeal. Although I have agreed with the Council's assessment and dismissed the appeal, the applicant incurred expense in preparing their appeal documents. The Council's actions have meant that the appellant has incurred unnecessary expense and an award of costs is justified.
11. The Council directs me to a costs decision from earlier this year² where the applicant expressed concerns regarding the lack of communication during the application process and the length of time the local planning authority took to make a decision. In that instance the costs application was refused, but I note three key differences in circumstances: Firstly, the appeal was against the refusal of permission by the Council, not non-determination; secondly, an extension of time had been agreed between the parties; and thirdly, there was

¹ APP/R5510/W/18/3208979

² Costs decision in relation to Appeal Ref. APP/R5510/W/18/3210145

no substantive evidence to suggest that the appellant incurred any additional expense as a result of the delay. None of these apply in relation to this appeal, where the delay has led directly to the applicant lodging the appeal and incurring wasted expense as a result.

Conclusion

12. 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 full award of costs is justified.

Costs Order

13. 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 Council of the London Borough of Hillingdon shall pay to Mr Stanley the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L McKay

INSPECTOR