



Costs Decision

Site visit made on 2 September 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Costs application in relation to Appeal Ref: APP/A5840/W/19/3222212 32a Penton Place, London SE17 3JT

- 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 Ebele Muorah for a full award of costs against the Council of the London Borough of Southwark.
 - 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 extension to studio flat.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application for costs has essentially been made on the grounds that there was unreasonable behaviour on the part of the Council by reason of failing to determine the application, and causing the applicant to incur costs associated with producing amended plans and tree reports during the application, as well as in lodging an appeal against non-determination.
4. The Council has not responded to the application for costs, but within its appeal statement it said that the delay in not making a decision was because it was seeking to negotiate a proposal that would facilitate rights of access to the communal garden.
5. The Guidance indicates that Councils as local planning authorities will be at risk of an award of costs against them in circumstances including unreasonably failing to determine planning applications. However, paragraph 033 of the Guidance explains that costs cannot be claimed for the period during the determination of the application, albeit behaviour and actions at the time of the application can be taken into account in the consideration of whether or not costs should be awarded.
6. I note that when the application was originally submitted it was not accompanied by a tree report, despite the proximity of the proposed extension to a large Lime tree and the proposed removal of a Bay tree. Once the effect on these trees became apparent to the Council, it was entirely appropriate to

request the tree reports, particularly as a Tree Preservation Order was subsequently put on the Lime tree. I note that the tree reports were submitted within agreed extensions of time and therefore during the application process. Accordingly, there was no unreasonable behaviour on the part of the Council in this regard.

7. With regards to the amended plans, from the limited information before me, it appears that at the outset of the Council's consideration of the application it was attempting to find a solution to the communal garden issue in good faith. Whilst the amendments requested were ultimately of little benefit to the outcome of the appeal, they took place within agreed extensions of time and therefore during the application process. Accordingly, there was no unreasonable behaviour on the part of the Council in this regard.
8. However, after the last agreed extension of time expired on 29 November 2018 there is no evidence before me of any subsequent communication from the Council to explain the ongoing delay in determining the application, or to provide a timescale for determination. Furthermore, it was unreasonable to continue to delay a decision on the application over what appears to be a private matter, and from the information before me, does not appear to be something that could be resolved through the planning application process. I have come to this view also bearing in mind that the Council appears to have had sufficient information on the planning issues to enable a decision to be made long before the non-determination appeal was submitted, as set out in my appeal decision. This amounts to unreasonable behaviour on the part of the Council.
9. Turning to the issue of unnecessary or wasted expense, the failure by the Council to determine the application led directly to the applicant submitting the appeal. Although I have dismissed the appeal, it was not on the grounds that the Council said had caused the delay, and the applicant incurred expense in preparing and submitting the appeal documents. The Council's actions have therefore meant that the applicant has incurred unnecessary or wasted expense in this regard and a partial award of costs is justified, but only in respect of preparing and submitting the appeal documents.

Conclusion

10. For the reasons above, I conclude 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

11. 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 Southwark shall pay to Ebele Muorah, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing and submitting the appeal documents; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to the Council of the London Borough of Southwark, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Adrian Caines

INSPECTOR