



Costs Decision

Site visit made on 7 October 2019

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Costs application in relation to Appeal Ref: APP/A1015/W/19/3234089 9 Bower Farm Road, Old Whittington S41 9PR

- 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 Brian Taylor for a full award of costs against Chesterfield Borough 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 a proposed single-storey side extension.
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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.
3. The PPG indicates that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably by delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The application was not determined by the Council. The PPG indicates that, if an appeal against non-determination is allowed, the LPA may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination, and better communication with the appellant would have enabled the appeal to be avoided altogether.
5. The applicant states that an extension to the 8-week target date for the application was agreed to the 20 June 2019. The appeal appears to have been submitted some 5 weeks or so after that date. From the evidence before me the Council's final correspondence to the applicant's agent was on the 5 June 2019 seeking an extension to the determination date to the 20 June 2019. No further responses were provided to the applicant's agent subsequent emails.
6. I understand that the Council were assessing the additional information provided by the applicant's agent regarding other examples of flat roof garages within the area. However, there is no substantive evidence that the Council contacted the applicant to advise that this assessment was being undertaken,

provide an explanation for the delay or seek agreement for an additional extension of time. I recognise that the application was submitted without the benefit of pre application discussions and the Council did appear to initially engage positively with the applicant during the application. However, I do consider that the Council behaved unreasonably in significantly delaying the determination of the application after the 20 June 2019, without explanation for the delay.

7. I understand that the Council's failure to determine the application may have been frustrating for the applicant. However, based on the evidence submitted by both parties as part of the appeal, it is reasonable to conclude that further communication between the applicant and the Council during that period would not have overcome the matter in dispute. As such, although the Council were unreasonable in so far as delaying a decision on the planning application, I cannot conclude that an appeal would have been avoided if a decision had been made by the Council. Consequently, the Council's substandard communication with the applicant's agent, whilst unreasonable behaviour, did not in itself cause wasted expense in the appeal process.
8. I do recognise that the Council and the applicant's agent had discussed the potential for amending the roof form and this option appeared to have been left open. If amended it would have appeared from communication that the Council would have approved the scheme. Although I recognise that there had been a lack of communication, it was, nonetheless, the applicant's choice not to amend the scheme but to lodge an appeal based on the flat roof design.
9. In terms of the substantive matters, the applicant's appeal submission sought to specifically address the issue in dispute which related to the flat roof form of the garage as previously identified by the Council during communication. I have summarised the matter in dispute within the main issue in my appeal decision, being the effect of the development on the character and appearance of the area.
10. The Council's statement of case sets out that if the application had been determined it would have been refused for a single reason that is complete, precise, specific and relevant to the application. It refers to conflict with policies CS2 and CS18 of the Chesterfield Borough Council Core Strategy 2011-2031 Adopted 2013 (CS), paragraph 3.8.19 of the Council's Supplementary Planning Document titled Successful Places, A Guide to Sustainable Housing Layout and Design for: Bassetlaw District Council, Bolsover District Council, Chesterfield Borough Council, North East Derbyshire District Council 2013 (SPD) and the design guidance within the National Planning Policy Framework (the Framework).
11. It will be seen from my appeal decision, that in allowing the appeal I found no harm with respect to the effect of the development on the character and appearance of the area. However, such a conclusion arises from matters of judgement on a subjective issue relating to the proposal's impact, relative to CS policies, the SPD and taking account of the Framework. Consequently, irrespective of the outcome of the appeal, I cannot find that the Council behaved unreasonably relative to the main issue in offering a different view to my own, given the subjectivity of the judgement made.

Conclusion

12. I conclude that, on the basis of the evidence before me, it has been demonstrated that the Council behaved unreasonably with respect to a procedural matter. However, in the particular circumstances of this case, I am not satisfied that the unreasonable behaviour caused unnecessary or wasted expense for the applicant in the appeal process in so far as an award of costs could be justified.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Robert Walker

INSPECTOR