



Costs Decision

Site visit made on 23 September 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPi

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Costs application in relation to Appeal Ref: APP/C1435/Y/18/3215525 Cullinghurst, Hartfield Road, Cowden TN8 7DZ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs M Cundey for a full award of costs against Wealden District 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 the grant subject to conditions of listed building consent for the partial removal of 20th century cat-slide roof covering, removal of 9No. common roof timbers; two storey extension in the same location, set in from and below the roof ridge and eave lines of the existing house; all alteration works are proposed to be well away from the most significant areas of historic built fabric.
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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 (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicants claim that the Council was unreasonable in not determining the application within the prescribed period, and that it did not respond to their attempts to contact the case officer, seeking explanation.
4. If it is clear that a local planning authority will fail to determine an application within the time limit, the PPG indicates that it should then give the applicant a proper explanation¹. There was no explanation of the delay or any request to extend the time-limit. I appreciate that the Council did not change from its pre-application stance against the proposal, and that it would have refused the application, which may have resulted in an appeal in any event.
5. Nonetheless, without any contact from the Council, and no indication of when a decision might be forthcoming, the applicants were denied a timely decision on their application, which led them to make the appeal. This is unreasonable behaviour on the part of the Council. It has led the appellants to incur the unnecessary expense of preparing the appeal submission for which an award of costs is justified.

¹ The Planning Practice Guidance, paragraph 48

Conclusion

6. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and that a full award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wealden District Council shall pay to Mr & Mrs M Cundey, 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. The applicant is now invited to submit to Wealden District 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.

Patrick Whelan

INSPECTOR