



Costs Decision

Site visit made on 1 October 2019

by P Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2019

Costs application in relation to Appeal Ref: APP/Z1510/W/19/3232964 Barn B, Highfield Farm, West Street, Coggeshall, Essex CO6 1NT

- 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 D Rudd for a full award of costs against Braintree 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 planning permission for the erection of a detached garage/ carport building.
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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 and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG also sets out in the case of the failure of the Council to determine an application within the prescribed period, the Council 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’¹.
4. The Applicant has requested that the planning fee submitted for the application be repaid due to non-determination of the planning application dwelling. The Council have responded and having considered the guidance from the PPG, and they do not feel that any of their behaviour has been unreasonable.
5. Following the Councils response, the applicant has indicated that the claim for the planning fee repayment is a separate matter to their increased costs for additional professional services on behalf of the applicant to submit evidence for the appeal and costs claim.
6. In respect of the repayment of the planning application fee, this does not fall within the scope of the costs regime through a planning appeal. It is therefore open to the Applicant to pursue such a refund, should they be due, through the appropriate mechanism.

¹ Paragraph: 048 Reference ID: 16-048-20140306

7. Whilst the applicant has provided copies of correspondence between the parties that suggest that the planning application was to be refused by the Council based on the land not being established for residential use. However, as the appellant had made a full planning application to the Council, the proposed change of use of land could have been able to be considered as part of that application.
8. It is also significant that no further information has been provided to indicate what the reason(s) for refusing the application might have been nor has the Council provided a credible reason why they did not reach a decision within the statutory determination period.
9. Evidence provided by the applicant suggests that the Council did not have sufficient resources to progress the application to an appropriate Planning Committee. Furthermore, the Council did not indicate when a determination might have been reasonably expected if the availability of resources was for a limited period. I find that the lack of information provided to the applicant in terms of both the planning issues that the application was likely to be refused upon, and the lack of an expected determination date is a clear example of unreasonable behaviour which has led to unnecessary expense being incurred.
10. Whilst I have found in favour of the Council in my appeal decision, had the planning issues been properly dealt with by the Council the appeal may not have been made. Given the lack of action by the Council in determining the planning application, the applicant was forced to appeal against non-determination of the application. The unreasonable behaviour of the Council has been further emphasized by the lack of an appeal statement giving the councils views on the planning merits of the proposal.

Conclusion

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

Costs Order

12. 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 Braintree District Council shall pay to Mr D Rudd, the costs of the appeal proceedings described in the heading of this; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Braintree 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.

P Mileham

INSPECTOR