
Costs Decision

Site visit made on 3 December 2019

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2019

Costs application in relation to Appeal Ref: APP/W2465/W/19/3237685 184 Tithe Street, Leicester LE5 4BN

- 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 Mrs Satnam Kaur Birk for a full award of costs against Leicester City 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 new industrial unit Class B2 to the rear.
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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 grounds for the application are based on the view that the appeal was unnecessary because the Council delayed the determination of the planning application and despite giving a positive response at the pre-application advice stage.
4. The Council is not bound by the pre-application advice that is given. However, it is not unreasonable for an applicant to have expected such advice to be consistent with how the application is subsequently dealt with, unless other considerations come to light. Otherwise, it would not provide a meaningful steer in terms of then deciding whether or not to prepare and submit an application. As the PPG sets out, a Council's behaviour during pre-application discussions can result in a substantive award of costs. In this regard, I am not unsympathetic to the applicant's position.
5. That being said, the costs this behaviour has resulted in were at the planning application stage. Any unnecessary costs that are for my consideration should relate to the appeal process, not to what has preceded it. Nor would the appeal have been likely avoided because the Council has indicated that if the application had been determined it would have been refused.
6. As is also stated in the PPG, where a Council may be at risk of a costs claim on the grounds of non-determination is in cases where the appeal is allowed and

there were no substantive reasons to justify delaying the determination and that better communication with the applicant would have enabled the appeal to be avoided altogether.

7. This does not apply in this case. When the putative reasons for refusal are considered they are substantive, complete, precise and relevant. They clearly explain on what grounds the Council considered the proposal not to be acceptable and they refer to relevant development plan policies. The Council's appeal statement also sets out how its concerns arise with a satisfactory level of explanation, even with the issues where I disagree. With the differences of opinion there are, it is not evident how better communication would have overcome these concerns.
8. Hence, that the applicant considered there was a need to resort to the appeal process because the Council failed to determine the application in a timely manner ultimately has not led to unnecessary and wasted expense.
9. The applicant clearly has the right of appeal where delays result in the usual timescales for determination being exceeded, notwithstanding that how the Council and the applicant's agent may view one another is not for my consideration. What though is of relevance is whether unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. For the reasons that I have set out above, this is not the case. An award of costs is not therefore justified.

Darren Hendley

INSPECTOR