
Costs Decision

Site visit made on 7 January 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2020

Costs application in relation to Appeal Ref: APP/J1535/W/19/3237274 Tylers Green Stores, Vicarage Lane, North Weald, Essex CM16 6ET

- 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 B Patel, Tylers Green Stores for a full award of costs against Epping Forest 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 described as 'replacement outbuildings used for storage and erection of a 2.15m high fence around the plot'.
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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 where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include preventing or 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 PPG further advises that where a local planning authority fail to determine an application within the time limits, it should give the applicant a proper explanation, and may be at risk of an award of costs if there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. The prescribed period for determination of the planning application subject of this appeal expired on 27 August 2019. I have been provided with copies of email correspondence sent by the Council to the applicant's representative on 23 August 2019 highlighting concerns with the height and materials of the proposed boundary treatment and seeking amendments. No response was received to this email, and the Council sent a subsequent email on 13 September 2019 forwarding the original request. On 20 September 2019, the Council received amended plans from the applicant's representative seeking to address the Council's concerns.

6. The Council have advised that they would have been minded to approve the application on the basis of these plans and would have requested the applicant's agreement to an extension of time for determination of the application to do so. However, on 16 September 2019 which was prior to the Council's receipt of the amended plans, the applicant lodged an appeal against the Council's failure to determine the application within the prescribed period. As a consequence of the lodging of this appeal, the Council were no longer able to determine the application or issue a decision.
7. I have been provided with a copy of the compliments slip accompanying the revised plans received by the Council on 20 September 2019 which advises that the applicant's representative did not receive the Council's original email of 23 August 2019. I note that the applicant has questioned whether this original email was sent. However, the Council have provided a copy of the email chain, and from the evidence before me I have no reason to doubt that it was sent. While it is unfortunate that it was sent close to the expiry of the prescribed period, and that it seems it was not received by the applicant's representative, this does not amount to unreasonable behaviour by the Council.
8. The applicant has referred to costs incurred in relation to the preparation of revised proposals to address the Council's concerns. However, the PPG notes that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage and that costs unrelated to the appeal are ineligible.
9. Moreover, while the applicant may disagree that any revisions should have been necessary, this is a matter of planning judgement. As set out in my Appeal Decision, I share the Council's concerns regarding the effect of the height and materials of the boundary treatment as originally proposed on the character and appearance of the area. Therefore, I do not find that the Council acted unreasonably in seeking amendments to the proposal. On the contrary, the Council sought to engage proactively with the applicant to overcome concerns with the development proposed as is encouraged by the National Planning Policy Framework, and exercised their duty to determine planning applications in a reasonable manner.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR