



Costs Decision

Site visit made on 7 January 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Costs application in relation to Appeal Ref: APP/Z5630/W/19/3236761 White House Nursing Home, 274 Malden Road, Worcester Park KT3 6AR

- 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 Rahim Nurmohamed for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - 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 three-storey rear extension.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying decisions. The PPG advises that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit.
4. In this instance, costs are sought on the basis that the applicant has found it necessary to register an appeal due to the failure of the Council to determine the application after a significant delay.
5. The application for planning permission was validated by the Council on 22 March 2019. Under the requirements of the Town and Country Planning (Development Management Procedure) Order 2015 the date for determination of the application was 9 May 2019.
6. The evidence provided by the applicant indicates that aside from the Council's acknowledgement of the registration of the application, no correspondence was forthcoming until almost 10 weeks after the original determination date. This came in response to contact instigated by the applicant. Subsequently, despite a timely response to a request for further information from the Council, no further correspondence was provided for an additional 6 weeks whereupon the Council advised the application would not be considered until the week commencing 14 October 2019, some 5 months after the initial deadline.

7. Whilst I note that the Council contends that it had posted a general notice on its website in respect of delays in the determination of planning applications, there was little by way of direct or proactive communication and explanation for the successive delays within correspondence to the applicant. Although the final communication gave reference to an administrative error, this did not explain the reasons for the previous significant delay or the further delay anticipated, for which the Council were requesting an agreement for the extension of the period for determination of the application.
8. The Council has subsequently advised that it failed to determine the application within the time limit because of an unprecedented lack of staff resources. Whilst I acknowledge that staff resourcing can cause problems in delivering timely decisions, it is incumbent on the Council, as the local planning authority, to fulfil its planning function without unreasonable delay.
9. The application was not overly complex nor can the delays be considered minor and the timescale was one whereby reasonable measures could be installed, even if only on a temporary basis, to facilitate improved communication if not the expertise to duly consider the content of the application. I find the Council's lack of communication at key stages in the process and absence of explanation to the applicant as to the reasons for those delays unreasonable behaviour that conflicts with the advice of the PPG.
10. Furthermore, the appeal was dated and submitted on 6 September 2019. Notwithstanding that I have found against the development on the grounds of its effect on living conditions, the Council completed the appeal questionnaire in November 2019 and subsequently provided a report concluding that the development should be approved. If this was the Council's view at that time, in order to avoid the necessity for an appeal, it was open to them to invite the withdrawal of the appeal and a re-submission of the application for expedient determination. I find no evidence to suggest that this took place.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that an 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 the Council of the Royal Borough of Kingston-upon-Thames shall pay to Mr Rahim Nurmohamed the costs of the appeal proceedings (only) described in the heading of this decision.
13. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR