



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: 20th February 2020

Costs application in relation to Appeal Ref: APP/J1535/W/19/3237700 2 Danbury Road, Loughton, Essex IG10 3AP

- 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 Paul Prior 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 for planning permission for conversion of existing property to 3 flats.
-

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. The PPG sets out 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. It goes on to advise 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 determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
4. The applicant indicates that agreement was given to extend the determination period for the planning application subject of this appeal to 4 July 2019 to allow the application to be considered by the Council's planning committee on 3 July 2019. However, the application was not considered by the planning committee on 3 July 2019.
5. From the evidence before me, the Council advised the applicant by email on 30 August 2019 of a number of concerns relating to the proposed development. These included a concern regarding the extent of the red-line boundary of the site, and the email advised that the application should be withdrawn and resubmitted to enable the matters raised to be addressed.

6. In response to the Council's concerns the applicant submitted an updated site location plan on 19 September 2019, seeking to amend the red-line boundary of the site. As my appeal decision identifies, this would be a significant change to the boundary of the site, and accordingly I do not consider that the Council's failure to accept this amended plan was unreasonable.
7. The Council identified two putative reasons for refusal relating to the effect of the proposal on the integrity of the Epping Forest Special Area of Conservation (SAC). I note there is a previous appeal decision for a similar form of development on the appeal site¹. However, this decision did not formally consider the effect of development on the Epping Forest SAC as the appeal was being dismissed for other reasons. It was not therefore unreasonable for the Council to raise this in response to the proposals subject of this appeal.
8. I note that the Council's email of 30 August and their appeal evidence refers to other matters such as provision for parking and waste and internal space standards which were not identified in the previous appeal decision as an issue. Nevertheless, the applicant has not provided any detailed response to these points, relying on a short rebuttal. It has not therefore been shown that these comments have led to any unnecessary or wasted expense.
9. I have no substantive information on the reason for the Council's delay in informing the applicant of their concerns with the application until some 8 weeks beyond the agreed determination date. I understand the sense of frustration that this delay and a lack of communication from the Council may have caused the applicant. Nevertheless, on the basis of the information before me it would not be reasonable to conclude that the Council had behaved unreasonably in the procedure leading up to the appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR

¹ Appeal reference APP/J1535/W/18/3210447