
Costs Decision

Site visit made on 10 March 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State.

Decision date: 30th April 2020

Costs application in relation to Appeal Ref: APP/Z5060/W/19/3244061 76 Marston Avenue, Dagenham, RM10 7LD

- 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 Lakhvinder Singh for a full award of costs against the Council of the London Borough of Barking & Dagenham.
 - The appeal was against the refusal of an application for planning permission for change of use to existing dwelling to form three self-contained flats comprising of a studio flat, a one bedroom flat and a three-bedroom flat.
-

Decision

1. The application for award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own costs.
3. Costs will normally be awarded where the following conditions apply: a party has made a timely application for an award of costs; the party against whom the award is sought has behaved unreasonably and the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expenditure in the appeal process.
4. The PPG advises at paragraph 033 that costs cannot be claimed for the period during the determination of the planning application. However, it also states that all parties are expected to behave reasonably throughout the planning process. I can take into account the behaviour and actions at the time of the planning application in considering whether a costs award should be made, where this behaviour has led to wasted or unnecessary expenditure during the appeal process.
5. The applicant has argued that the delay in determining the planning application is an example of the Council's unreasonable behaviour and that this has caused wasted or unnecessary expenditure in the appeal process.
6. It is clear that the Council did take longer than the statutory time limits to determine the appeal. However, they did issue a decision containing reasons for refusal which clearly explained why the application had been refused. This allowed the applicant to develop a comprehensive case at the appeal to demonstrate why the appeal should be allowed and planning permission granted. The time taken to determine the planning application could have

amounted to unreasonable behaviour. However, I am of the view that because the Council were able to articulate their reasons for refusing the application in a decision notice, this has not led the applicant to incur any unnecessary or wasted expenditure in pursuing this appeal.

7. The appellant has argued that the change in the description of development the Council made has disadvantaged him, in that his original description of development would have meant that the appeal proposal complied with planning policy. I have had regard to this argument in deciding the planning appeal as I used the description of development given by the applicant set out on the application form. It is clear from all the descriptions of development and the details shown on the plans submitted with the planning application what was proposed in the development.
8. The appellant has argued that he has received inconsistent and misleading advice regarding the acceptability of the proposal from Council officers. I understand that within planning departments there might be differences of opinions between officers about the planning merits of proposals. I understand the frustration of the applicant over this alleged inconsistent advice. However, the Council issued a formal decision refusing planning permission based on substantive planning matters, including non-compliance with the development plan. The PPG states at paragraph 050 that where a local planning authority has refused a proposal that is not in accordance with the development plan and no material considerations including national policy indicate that planning permission should be granted, there should be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I do not find that the Council has behaved unreasonably in this respect.
9. Finally, there is some suggestion in the applicant's case that if the Council had asked for amendments before refusing the planning application then the appeal could have been avoided and this has led to an unnecessary appeal and therefore wasted expenditure. As I have no amended plans before me, I am not in a position to say whether, on the balance of probabilities, that the amendments to the scheme might have made it acceptable in planning terms.
10. I note the applicant has partially based his application for an award of costs on lost income as a result of the delay in obtaining planning permission. Paragraph 032 of the PPG states, amongst other things, that an award of costs cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.
11. I therefore conclude, having regard to all other matters raised, that unreasonable behaviour by the Council leading to the applicant to incur wasted or unnecessary expenditure has not been demonstrated, and it follows that an award of costs is not justified.

Peter Mark Sturgess

INSPECTOR