
Costs Decision

Site visit made on 13 May 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Costs application in relation to Appeal Ref: APP/T5150/W/20/3245872 58 Salusbury Road, London NW6 6NP

- 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 Sunil Patel (Hyperchem Ltd) for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the use of the premises for "retail primary use at the front (A1) and sub-dividing two rooms for ancillary use for Doctor and Dentist use (D1)".
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG¹ also sets out an expectation that parties will normally meet their own expenses.
3. Planning Practice Guidance² states that in an appeal relating to the non-determination of an application, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit and explain why permission would not have been granted had the application been determined.
4. The Council has set out that the application was not determined due to a response not being received that satisfactorily addressed a concern that was raised in relation to the presence of a toilet and the effect of this on the intended use of the premises. Whilst I do not agree with the concerns of the Council in this regard, for the reasons that are set out within the appeal decision and having regard to the applicable development plan policy, it was not unreasonable for the Council to seek clarification in relation to the manner that the premises would be used. In this regard, the clarification provided by the appellant appears not to have satisfied the Council and, therefore, it would not have resulted in the appeal being unnecessary or avoidable.
5. Whilst the National Planning Policy Framework encourages proactive engagement between parties, particularly prior to the submission of an

¹ Paragraph: 028 Reference ID: 16-028-20140306

² Paragraph: 048 Reference ID: 16-048-20140306

application, there is no obligation for either party to engage in discussions following the submission of an application. However, evidence of communication between parties has been provided. Therefore, whilst the appellant is dissatisfied with respect to the timeliness of the exchanges and the cooperativeness of the Council, I do not find that the actions of the Council represent unreasonable behaviour. Furthermore, I do not agree with the appellant that it would not be possible or reasonable for the Council to raise matters of concern without an Officer Report having first been prepared.

6. The Council's appeal submissions clearly indicate that the application would have been refused. Therefore, whilst the application was not determined within the statutory timescales, I do not find that the actions of the council, or the lack thereof, led to the submission of an unnecessary appeal. Accordingly, any expenses related to the submission of the appeal were not incurred unnecessarily. Furthermore, I have no reason to conclude that agreeing to an extension of time for the determination of the application would have avoided the appeal being submitted. As such, the Council not acting upon an enquiry from the appellant in this regard has not led to the submission of an appeal that would have otherwise been avoidable.
7. The parties submissions disagree as to whether a site visit took place and the appellant contends that a site visit should only be undertaken after the public consultation period has expired. In this regard, the submissions do not direct me to any legislation or guidance which makes a site visit a requirement or specifies the time when such a visit should occur. Therefore, even if a site visit did not occur, I do not find that this represents unreasonable behaviour.
8. The appeal procedure allows for the Council to suggest conditions. Therefore, whilst I agree with the appellant that the conditions suggested by the Council would not be relevant to the development proposed, it is a legitimate part of the appeal process for the Council to suggest conditions and for the appellant to respond. Similarly, whilst the Council's comments about no fee being required for a resubmitted application for advertisement consent do not appear to be relevant, it is the role of a party to raise matters that they consider to be relevant and discretionary for the other party to have responded. Accordingly, the Council's actions in these respects do not represent unreasonable behaviour that has caused unnecessary expense to be incurred.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Ian Harrison

INSPECTOR