



Costs Decision

Site visit made on 7 July 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Costs application in relation to Appeal Ref: APP/F4410/W/20/3249282 2 Rectory Gardens, Wheatley, Doncaster DN1 2JU

- 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 Andrew Muscroft-Gosden for a full award of costs against Doncaster Metropolitan Borough 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 a development originally described as "the erection of a 6 foot metal railing fence to the public highway, the erection of a 9 foot wooden fence to the boundary between 2 DN1 2JU and St Marys care home and the erection of a 7 foot wooden fence to the boundary between 2 DN1 2JU and 4 DN1 2JU."
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's costs claim is made on the grounds of the failure of the Council to decide the planning application within the required timeframe; not having regard to the precedent of similar, or the same, development in the area; and a failure to respond to queries in full, a lack of engagement and not undertaking a site visit.
4. The PPG states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. As it was evident that the applicant did not indicate that the proposal was to be amended in accordance with the Council's advice, it is not clear why the Council did not then determine the application. Whilst I understand there was a change of personnel at the Council, this seems well after the date by which the Council should have made its decision. This amounts to unreasonable behaviour.
5. However, for a costs order to be awarded unnecessary or wasted expense in the appeal process also needs to have been demonstrated. The Council has stated that if it had determined the planning application, it would have been refused and this position is consistent with its appeal statement. As such, and

whilst I appreciate the applicant's concerns and the rationale for the boundary treatment, the appeal costs would still have been occurred. The costs regime also only extends to the appeal itself and not to indirect losses, such as the costs of the security fencing for the duration that it would be on site.

6. Turning to matters concerning precedent, the Council point to that each application is to be treated on its own merits. This is also not a case where other forms of boundary treatment, in particular solid wooden fences that are close to site frontages, have changed the prevailing character so that it would be unreasonable not to consider the proposed fences acceptable. Enforcement related matters on other sites fall outside of the consideration of the appeal and, thus, the costs claim.
7. With regard to responding to queries and engagement, email chains have been brought to my attention between the applicant and the Council. At times during the course of the planning application, they indicate a not insignificant amount of correspondence between the main parties. Overall, this does not amount to a lack of co-operation. Where there was less engagement, in particular around why the application was not determined, has been dealt with earlier in my costs decision. Nor does a lack of resolution over the matters of dispute, in itself, amount to unreasonable behaviour but rather reflects a clear difference of opinion over the planning merits of the proposal.
8. The Council has also provided sufficient evidence to demonstrate that a site visit was undertaken. Even if the Council Planning Officer did not enter the site, it was viewed locally. The site can also be plainly viewed in public vantage points from Thorne Road and Rectory Gardens. Disagreements over the ground levels also do not amount to unreasonable behaviour because the Council's concerns are centred more broadly on the effect on the conservation area.
9. The Council's appeal statement was submitted in accordance with the timetable set out in the Planning Inspectorate's Start Letter and was forwarded on for comments to the applicant shortly afterwards. Hence, there was not a delay in providing information or a failure to adhere to appeal deadlines.
10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR