



Costs Decision

Site visit made on 22 July 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2020

Costs application in relation to Appeal Ref: APP/T2405/W/20/3250365 170 Leicester Road, Glen Parva LE2 9HH

- 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 H Singh for a full award of costs against Blaby District Council.
 - The appeal was against the refusal of an application for planning permission for development described as an outline application for the erection of 3 no. four bed dwellings and 1 no. three bed dormer bungalow in the rear garden (all matters to be considered except appearance).
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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 only 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. Patently this is a two stage test. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. There are a number of elements to the applicant's claim. These relate mainly to the perception that they were unable to enter into constructive dialogue with the Council that would have allowed matters to be resolved or changes made to the scheme to make it acceptable. There is also some concern that the Council employed a temporary member of staff to process the application and that this staff member left the employ of the Council immediately prior to the determination of the application. The applicant also feels that the Council was not in favour of the scheme from an early stage. There are a number of other subjective matters raised by the applicant in their costs claim but these have been discussed and addressed as part of my decision on the appeal case.
4. Taking the engagement with the Council first, I can see from a chain of communications between the applicant and the Council that they were first

notified of concerns about the proposed development in early November 2019, and following a visit to the site from the case officer. From the decision notice I can also see that the Council registered the application in early October 2019. Therefore, the initial notification of issues of concern from the Council appears to have been soon after the end of the public consultation period, taking into account evidence gathered from the case officer's site visit. In the statutory eight week life of the planning application being on deposit with the Council, the time period in this case seems reasonable. The communications I have seen between the applicant and the Council seem cordial with the case officer explaining clearly, concisely and with reference to the relevant policies of the development plan where their concerns lay. An exchange of information then ensued, stretching over into early December 2019, where an extension of time for the Council to determine the applications appears to have been agreed.

5. The application was determined towards the end of December and it is not clear what other dialogue, if any, then took place between the applicant and the Council. The applicant explains that they were shocked to hear that around this time the application was due to be refused but then they were informed of what the Council's views were some time prior so such information should not have been wholly unexpected. To work proactively with an applicant does not necessarily mean the result will be a planning permission. It is sufficiently clear to me that the Council had fundamental objections which related to the principle of the development of the appeal site that tweaks to it, even a reduction in the number of dwellings, would have struggled to overcome. I am satisfied that the Council have been open and honest about their views from as earlier a stage as was reasonably possible.
6. It appears to be the case that the Council employed the services of a sub contracted consultant to process the application. This in itself is not an unusual situation and is a measure used by Council's to either fill temporary gaps in staffing or spread workloads due to an increased demand for their services. From communications I have seen I have no reason to doubt this consultant's knowledge, professionalism or inter personal skills. The Council have confirmed that any recommendation they would have made on an application had to signed off by a manager which was done in this particular situation. It perhaps might have been helpful to inform the applicant that their case officer was due to leave the Council's employ prior to the determination of the Council but there is no statutory duty for them to have done so. Their role is to register the valid planning application, undertake consultation and make a decision in accordance with their own adopted scheme of delegation. They did so. As such there is no heavy criticism I can necessarily levy in their direction. Even if one could say conclusively that the Council behaved unhelpfully, that does not necessarily mean they were unreasonable for the purposes of a successful costs claim.
7. I agree that it seems the Council felt there were issues with the appeal scheme from an early stage but by informing the applicant of that fact, it has allowed them to plan for what they intended to do about it. Making those views clear means that an applicant knows where they stand and hope value about the outcome can be managed. Although obviously not the case with the appeal scheme, it does not necessarily pre determine the outcome since some planning applications, by either call in or through circumstances of a given Council's adopted scheme of delegation, are determined by elected ward members at planning committees.

Conclusion

8. For the reasons I have set out above, I do not consider that there has been such behaviour by the Council in either their determination of the planning application or conduct during the appeal process so as to amount to unreasonable behaviour and the effects thereof as explained by PPG. An award of costs is accordingly refused.

John Morrison

INSPECTOR