
Costs Decision

Site visit made on 11 March 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2020

Costs application in relation to Appeal Ref: APP/W1715/W/19/3243409 85 Hocombe Road, Chandlers Ford SO53 5QB

- 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 and Mrs Bright for a full award of costs against Eastleigh 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 development described as *'two storey front and rear extensions, single storey side extensions, raising of the roof and alterations to fenestration'*.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that unreasonable behaviour by local planning authorities in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal). The applicants are seeking an award of costs on procedural grounds.
4. Although costs cannot be claimed for the period during the determination of the planning application, the Guidance confirms that costs applications may relate to events before the appeal. It goes on to say that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The Guidance also states that all parties are expected to behave reasonably throughout the planning process.
5. The applicants consider that the Council has acted unreasonably by refusing to validate and determine the submitted householder planning application for alterations and extensions to the existing building, by considering that the application comprised a full planning application for the demolition and rebuild of the dwelling. This view was taken notwithstanding the applicants' assertions

that this was not the case and that the property would continue to be lived in during the construction of the appeal scheme. The applicants are also of the opinion that the Council has other legislative powers it can rely on to ensure that the development is carried out in accordance with the planning application submission details. As such, the applicants consider the appeal, for a determination on the application as submitted, was unnecessary.

6. The Guidance 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 applicants a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
7. It will be seen from my appeal decision, that I find the Council's concerns about whether or not the application constitutes a householder application to be reasonable. My judgement has had regard to the extensive nature of the proposed building works, the relatively small proportion of the existing building that would remain, the lack of a detailed phasing plan to demonstrate how the appellants would continue to reside in the property during the construction works, and the Guidance advice in respect of the requirements for making a valid application for planning permission.
8. The Council's statement of case sets out the Council's concerns and reasons for not validating the planning application. Both main parties have confirmed how these concerns were communicated to the applicants during the application process, and this is detailed in the appeal decision. The Council requested the submission of a phasing plan. As set out in my appeal decision, I find that this request was reasonable.
9. Also, the appeal decision confirms that I do not consider that this matter could be dealt with at a later stage under the Council's enforcement powers, having regard to the validation requirements as set out in the Guidance.
10. Furthermore, the Council's statement of case confirms that, had the Council found the application to be valid and had proceeded to determine it, the application would have been refused due to the impact of the development on the character and appearance of the host property, the street scene and the surrounding area.
11. Accordingly, having regard to the above, it follows that I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

S Leonard

INSPECTOR