
Costs Decision

Site visit made on 12 August 2020

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st September 2020

Costs application in relation to Appeal Ref: APP/R0660/W/20/3251771 Domek, 48 Towers Road, Poynton SK12 1DE

- 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 Harvey Homes and Mr M Sochaczewski for a full award of costs against Cheshire East 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 the replacement of a single family home with 3 family dwelling houses and associated off road parking.
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for an award of costs is made on substantive grounds on the basis that the Council did not determine the application within the target date. It is alleged that the proposal is sustainable development that should have been approved without delay and that the resulting need to produce an appeal statement represents a wasted expense.
4. The PPG indicates that if a local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. It states that 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 time period. It goes on to highlight that if an appeal is allowed in such circumstances, costs may be awarded against the local planning authority if it is considered that there were no substantive reasons to justify delaying the determination and if better communication with the applicant would have enabled the appeal to be avoided altogether.
5. The Council's rebuttal to the cost claim indicates that the officer dealing with the application had been in discussions with the agent during the application process. The officer considered that in principle the redevelopment of the site

was acceptable, but alterations were necessary to make the scheme acceptable in relation to policy. It would appear that these discussions continued after the appeal was submitted. In cases when it is considered that the development may be acceptable in principle but needs some amendments, I consider it is not unreasonable for the Council officers to negotiate with the appellant over the details of the development. In submitting the appeal, the appellant clearly decided they did not wish to amend the scheme but wanted to have it determined on the basis of the submitted drawings. There is no evidence before me to indicate that they communicated this fact to the Council before the appeal was submitted.

6. In responding to the appeal the Council's statement sets out the reason why the Council would have refused permission had an appeal against non-determination not been submitted. The reason they would have refused the application relates to the impact it would have had on the character and appearance of the area. Substantive reasoning for this is set out in the statement, and the policies within the development plan, to which the Council considered the scheme would be contrary, are set out. Although the Council does not refer specifically to the *Cheshire East Borough Design Guide (adopted May 2017)*, this is a Supplementary Planning Document, not part of the development plan, and the policies from the development plan are clearly referenced in the Council's evidence.
7. The Council considered that the density of the appeal scheme would not reflect the prevailing character of the area as the houses would be too close together and the front facing elevations too narrow. As a result, they considered the development would appear cramped and out of character. Whilst the appellant may not agree with this reasoning, it does not mean that the Council has acted unreasonably. As set out in my decision, I have agreed with the Council in this regard.
8. Overall, I consider that the Council has provided substantive reasoning for why permission would not have been granted, had the application been determined within the relevant time period. In the light of this, although the appeal is against non-determination, as the Council would have refused the application, the cost of the appeal does not represent wasted or unnecessary expense.
9. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

Alison Partington

INSPECTOR