
Costs Decision

Site visit made on 18 August 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Costs application in relation to Appeal Ref: APP/D0121/X/20/3249213 Railway Wharf, Station Road, Wrington BS40 5LL

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Prestige Property Development Ltd for a full award of costs against North Somerset 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 a certificate of lawful use or development for a replacement of an existing hardstanding and the removal of raised flower bed.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 application was dated 18 October 2019 and the appeal against non-determination was made on 18 March 2020, 5 months after the date of the application.
4. The Guidance also says 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. 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.
5. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
6. In this case it is clear that the Council acted in a proactive manner, seeking clarification and suggesting amendments to exclude parking spaces for Units 3 and 4 associated with uses which did not benefit from permitted development rights. Whilst it took the Council until 18 December 2019 to communicate this to the appellants, the alternative open to the Council was to refuse the

certificate at that point, as it would clearly not have been lawful. A further amendment was sought clarifying the status of the layby. I do not consider that either of these requests was unreasonable.

7. It became apparent that there was a discrepancy between the approved uses of the units in Railway Wharf and their current use, and the Council was justified in trying to seek clarification as to what was the lawful use of the units. Uses under Classes A1, A3 or B1 all benefit from permitted development rights to construct replacement hard surfaces under Classes E and G of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, that is not the case where D1 uses are concerned, and as it appeared to the Council that Units 1 and 5 had a lawful use as Class D1, the onus of proof, on the balance of probabilities, lay with the appellant to show that the existing use of those units was lawful, and thus benefitted from permitted development rights. Whilst the Council may have been able to establish the lawfulness of these uses from their own records, the responsibility for providing precise and unambiguous evidence lies with the appellants.
8. The appellants' email of 3 March 2020 identified, with reference to relevant planning permissions, the approved uses of the site, making it clear that some uses had changed without the necessary planning permission, but had become lawful through the passage of time. I consider that it was not necessary to obtain a separate certificate of lawfulness to establish this, where there was photographic evidence to confirm the position, on the balance of probabilities, that all the uses had become lawful.
9. However, just 3 days later, on 6 March 2020 the appellants said in an email that "we're happy to provide stat decs as part of this application confirming that the uses have occurred for more than ten years (and I don't truly believe there is any doubt on this from the Council) and I see no reason why they can't be considered to support this LDC application."
10. I consider that this email gave the impression to the Council that further information would be forthcoming, and thus it was not unreasonable for them not to determine that application pending receipt of that information. However, rather than providing that information, the appellants appealed before the Council could make its decision.
11. I consider that as from 3 March 2020, the Council had adequate information to decide the application. However, due to the subsequent correspondence, I consider that the Council had good reason to believe that confirmatory information would be provided, and that it was not unreasonable to await that information. I therefore conclude that in all the circumstances, unreasonable behaviour as described in the Circular has not been demonstrated. The application for an award of costs therefore fails.

JP Roberts

INSPECTOR