
Costs Decision

Site visit made on 25 August 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2020

Costs application in relation to Appeal Ref: APP/Q0505/W/20/3248409 1 Mere Way, Cambridge CB4 2JP

- 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 Oliver Trisic for a full award of costs against Cambridge City 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 extension of existing house and conversion to create 4 one-bedroom flats and one studio apartment.
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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 PPG states where an appeal against non-determination is allowed, the Council may be at risk of a costs award if there were no substantive reasons to justify delaying the determining of the application, and better communication with the applicant may have avoided the need for the appeal altogether. It also states that Councils are at risk if they have prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The main thrust of the applicant's concerns appears to relate to the Council's failure to make a decision in a timely manner, the amount of communication during the application's consideration and various issues in relation to pre-application advice and the advice given by different planning officers during the process. Concerns have also been raised about the appeal statement, including that it included issues not previously raised. The appellant has set out a list of costs he considers should be met. However, the PPG is clear that costs are *only* those which are directly related to the appeal process itself. Costs awards cannot extend to such things as pre-application advice, planning application fees, costs associated with changes that were made to the proposal during its consideration or perceived loss of income.
5. The application was made on 22 December 2019. The appeal was submitted on 5 March 2020. There is a significant amount of dispute between the parties as

- to the chronology of the application and the outcomes of discussions with officers at pre-application stage and throughout the application's consideration. This includes some dispute as to whether at any point the Council's officer indicated the development would be recommended for approval.
6. While there is no agreement on the nature or outcome of the communication, it is clear that some must have taken place, or the appellant would not have considered it necessary to amend the proposal. Indeed, the appellant makes several references in his overall evidence to changes having been made to address concerns raised. Nevertheless, I have no documentary evidence before me which suggests the Council ever concluded that the scheme as originally submitted or, as amended, would have been considered acceptable. I have therefore given this line of the applicant's argument little weight.
 7. Although different officers may have had an input into the proposal, there is no substantive evidence on which to conclude that any conclusions were not based on the development plan or good planning practice. While the applicant may feel strongly that the Council's opinion of his proposal is flawed, these remain matters of planning judgement. It is not unreasonable in principle for the Council to conclude as they did. Indeed, I have generally agreed with their conclusions and thus this is clearly not a case where the Council sought to delay a proposal which is in accordance with the development plan, national policy or any other material considerations. Furthermore, it seems most likely that the concerns with the proposal were so significant that further discussion or communication would not have avoided the need for the appeal.
 8. The Council are also entitled to come to different conclusions about different applications elsewhere in the City. This does not mean that they have been unreasonable in principle. There is nothing to suggest that in coming to their conclusions, they did not have regard to all other material considerations.
 9. The Council's appeal statement clearly sets out the grounds on which they would have refused the application. They have also clearly substantiated their case. There is no unreasonable behaviour in this regard. I note that their appeal statement failed to engage with some of the applicant's evidence, including the revised plans which were submitted prior to the appeal. However, this in no way prejudiced the interests of the applicant or impeded me from making a decision. There is certainly nothing to suggest that had they made specific reference to these plans, there would have been any change in their conclusion.
 10. Similarly, the assertion that the appeal statement was written by someone other than the case officer is not evidence of unreasonable behaviour. There is no reason in principle why an appeal statement must be written by the case officer. I recognise the applicant disputes many of the findings of the Council or considers the statement either raises new issues or contradicts the advice given. Again, there is no strong evidence before me that this is the case. Even if it were, I do not consider it likely that the overall outcome would have been different.
 11. I note the applicant went to the expense of producing revised plans to seek to meet one of the Council's concerns. However, there is no requirement to do this and the Planning Inspectorate's Planning Appeal Procedural Guide is clear that the appeal proposal should not be used to evolve a proposal. Rather, it suggests that a new application should be made if it considered amending

proposals will overcome a reason for refusal. Furthermore, had the application run its course, then this issue would undoubtedly have come to light prior to the appeal. I do not consider this warrants an award of costs.

12. The Council has accepted that there were delays in the validation of the application relating to IT services and that this impacted on their ability to meet their statutory 8 week target. This is clearly not the fault of the applicant. There appears to be no other procedural reasons why there should have been a delay in determining the application. This could amount to unreasonable behaviour.
13. However, to award costs there must also be evidence of unnecessary or wasted expense. From the totality of the evidence before me, it appears most likely that had the Council made a decision, it would have refused the application for the same reasons given in their statement. The appeal would therefore still have been necessary, and any costs associated with this would have been incurred. As such, I consider that the delays, or any other concerns raised by the applicant, have not led to any wasted or unnecessary expense. On this basis an award of costs would not be applicable.

Conclusion

14. On the basis of the evidence before me, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and consequently the application for an award of costs is refused.

S J Lee

INSPECTOR