
Costs Decision

Site visit made on 5 October 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26TH October 2020

Costs application in relation to Appeal Ref: APP/Q5300/W/20/3254687 5 Orchardmede, Southgate, Enfield, London N21 2DL

- 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 P Buxton for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for change of use from C3(Dwelling house) to C2(Care home) with associated side and rear extensions.
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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 application for an award of costs is on the basis that the Council failed to determine the planning application within the statutory timescale and that the application remained undetermined for some time beyond this statutory period, despite repeated requests for it to be determined. No decision was ultimately made before the submission of the appeal against non-determination.
4. The PPG indicates that a local planning authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance states that if the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay.
5. The Council acknowledged receipt of the application on 25 September 2019 confirming that the application was valid from 20 September 2019 and advising that a decision was due by 15 November 2019, the statutory deadline. The applicant's agent emailed the Council on 30 October 2019 to request an update on the progress of the application and again on 11 and 14 November, as no response had been forthcoming. The applicant subsequently lodged a complaint with the Council.
6. The evidence before me appears to indicate that there was some discussion between the parties from late April to 7 May 2020, but this does not appear to have continued. Despite repeated attempts by the applicant's agent to seek

clarification on when a determination was likely, or whether the applicant should lodge an appeal, no clarification appears to have been forthcoming from the Council and they continued to delay proceedings. The Council subsequently confirmed that a decision would be made on 17 June 2020, but this did not occur, so the applicant submitted an appeal against non-determination on 22 June 2020.

7. The Council's failure to determine the application is a matter of serious concern and in this case has fallen significantly short of nationally prescribed expectations. There appear to have been a number of delays in the processing of the planning application between November 2019 and April 2020, but I am not aware of the circumstances that led to those delays. Nevertheless, the period of unexplained delay from early May 2020 is unacceptable, and I consider this to amount to unreasonable behaviour by the Council during the procedure leading up to the appeal.
8. I turn then to the matter of unnecessary or wasted expense. The applicant submitted a short Statement of Case which largely includes copies of planning policies and appendices with email correspondence between the appellant's agent and the Council in the lead up to the appeal. The applicant also provided final comments in response to third party correspondence provided by the Council through the application process and those received as part of the appeal. However, the comments were straightforward and involved a short rebuttal of third-party responses. It appears to me that, in reality, there has been so little extra work, as a result of the appeal, that it can be regarded as 'de minimis'. In fact, the applicant has quickly and succinctly set out their case and responded to third party correspondence without wasting expenditure.
9. In addition, as a period of 26 weeks has passed since the planning application was validated by the Council, with no extension of time being sought, the applicant is seeking the return of the planning application fee through this application. However, the PPG advises that costs that are related to other proceedings are ineligible and, as indicated by the applicant, this matter is dealt with by Regulation 9A of the Fee Regulations¹.
10. As a result, although I find that the Council acted unreasonably in its handling of the planning application, it has not caused unnecessary or wasted expense. Therefore, an award of costs is not justified.

Paul Thompson

INSPECTOR

¹ The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended).