



Costs Decision

Site visit made on 6 October 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2020

Costs application in relation to Appeal Ref: APP/N0140/W/20/3256637 Beechwood Court, 5 Gore Road, Burnham SL1 8AA

- 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 Malkit Purewal for a full award of costs against Buckinghamshire 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: Infilling below the existing undercroft with walls, door and windows to facilitate the implementation of prior approval reference PL/19/2783/PNO.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that 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. In summary, the costs application is made on the basis that the Council failed to determine the planning application subject of the appeal in a timely manner. The appellant states that the Council have not provided a formal reason for the delay, despite working positively with the Council, and that a lack of communication from the Council has meant the appeal was unavoidable.
4. Paragraph 048 of the PPG provides guidance with regard to cost applications made for the above reasons. It states:

'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.'

5. The planning application was submitted on 28 April 2020 and the statutory period for issuing the decision would have expired on 23 June 2020. There are, however, procedures that allow for the formal extension of that prescribed period. Whilst I note the appellant's final comments on his costs application in this regard, the Council have not suggested that there had been an agreement to a formal extension of the prescribed period. The Council simply state that

the statutory consultation period extended beyond 23 June 2020. I note that the appeal form is dated 24 July 2020.

6. In its response to the costs application the Council states that the planning application was received by the Council close to the start of the national restrictions imposed in response to the Covid-19 pandemic. The Council say that as its officers had to adapt to working remotely, this resulted in a delay to the validation of the application. Similarly, the national restrictions on movement also meant there was a delay in the display of the site notice, which is, of course, a statutory requirement. As noted above, this meant that the statutory consultation period ended beyond the date by which the application should have been determined.
7. In addition to this, the Council point to the complex planning history to the site and the information submitted in support of the application. It is suggested that it was necessary to seek advice from the Council's legal team, which again was challenging as a result of remote working.
8. I note the appellant's suggestion that the other very recent planning applications for the site should have made the assessment of the application easier. However, I have no doubt that the restrictions imposed as a result of the Covid-19 pandemic had a sudden and significant impact on all aspects of the Council's planning service. Indeed, in the email correspondence dated 4 June 2020¹ the planning officer sets out the difficulties he has experienced in being able to work. Access to the advice of colleagues within the Council, as well as relevant planning records is likely to have been more challenging during this period. This is, therefore, an acceptable reason for the delay in this case.
9. The Council point to the case law and appeal decisions that were drawn to its attention when determining the application. Indeed, I note that such documents are appended to the appellant's appeal statement. In these circumstances it would not be unusual for the planning officer to seek legal advice. As such, I have no reason to doubt that the advice of the Council's legal team was sought during the determination of the application, despite the lack of any evidence of this internal communication. I do not, therefore, disregard this as an additional reason for the delay in the determination of the application.
10. Although limited, there is evidence that the Council had attempted to contact the appellant during its consideration of the application. The appellant had also been made aware of some of the difficulties the Council were experiencing during the period of determination of the application, as evidenced by the planning officer's email of 4 June 2020.
11. Section 78 of The Town and Country Planning Act 1990 allows a person to make an appeal where the local planning authority have not given notice of their decision within the prescribed period or within such extended period as may at any time be agreed upon in writing between the applicant and the authority. As such, it was the appellant's right to make an appeal in this case. I acknowledge that the delay in the determination of the application may have been frustrating. However, I am satisfied that substantive reasons have been provided in this case to justify the lack of notice of the Council's decision within the prescribed period. Whilst there was limited communication between the

¹ Found in the appellant's appendices 11 to 16.

parties with regard to the reasons for the non-determination of the application, I cannot on balance conclude that the Council have behaved unreasonably in this regard, particularly in view of the challenges resulting from the restrictions imposed due to the Covid-19 pandemic.

12. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR