

Costs Decision

Site visit made on 6 November 2020

by Martin Andrews BSc(Econ) MA(Planning) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 December 2020

Costs application for Appeal Ref: APP/T5720/W/20/3249007 2A Oakwood Avenue, Mitcham CR4 3DP

- 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 Adam Thompson for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was made against a failure to give notice within the prescribed period on an application for planning permission for the existing roof to be realigned; dormer added to the rear; demolition of existing garage to create new access; internal alteration including new internal stairs to loft; new accommodation created in the loft; new windows added; existing chimney removed.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance 2014 explains that costs will normally be awarded when unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The application is made on both substantive and procedural grounds, with the former relating to the planning merits and the latter to the handling of the planning application and in particular a failure to come to a decision.
 4. As regards the substantive claim, the appeal decision makes it clear that I agree with the Council's view that on its merits the development in the form submitted should not be approved. Therefore, even if the application had been determined, a Notice of Refusal on the lines of the deemed refusal reason in the Council's report would in my view have been issued correctly.
 5. In respect of process, the appeal evidence is far from being clear as to the timeline of the application process. However, it appears that the application was validated in April 2019 with an unexplained delay until an appraisal carried out between August and the end of October. Within this period it appears that the applicant /agent engaged a different architect. The appraisal included email correspondence, phone calls, several amended plans and at least one agreement for an extension of time.
 6. The outcome of this was that the case officer was recommending approval, albeit he made it clear on 13 September that his appraisal was subject to review by his line manager who would make the actual decision on behalf of the
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Council. The only other information on the appeal file is a full report on the application that is undated and written by someone other than the case officer involved in the September correspondence.

7. I can find no explanation why, with a registration date in April, the application was not processed until the late summer / autumn. However, from 6 June 2019 onwards (and excluding any periods of an agreement for an extension) the appellant had a right to make his non-determination appeal which would have had the effect of taking the application out of the Council's hands.
8. Similarly I can find no explanation why, after appraising the application and requesting amended plans in the period up to the end of October, the Council did not issue a decision, be it an approval as initially recommended by the case officer, or a refusal as recommended by a second case officer and / or decided by the line manager. Be that as it may, the appellant had a second opportunity to make his appeal against non-determination from the beginning of November onwards. In the event he did not do so until 14 March 2020.
9. Firstly, in respect of the change from a prospective approval to an actual approval, this is by no means uncommon in Local Planning Authorities. Working practice is normally for a case officer to conduct his appraisal and draft a report including a recommendation. As planning is inherently subjective the line manager or senior officer is entitled to reach his own view. Indeed, in the same way, a Chief Planning Officer's recommendation is sometimes overturned by Council Members on a planning committee. I recognise that this change of heart can be frustrating for applicants, but it is what it is and is not normally unreasonable behaviour as defined in Government advice.
10. Secondly, as regards the delay I am limited in drawing many conclusions as I have only have 'part of the story'. Certainly, on the evidence available the Council's performance in handling the application has been poor. And this unsatisfactory performance includes the absence of an explanation to the applicant as to the reason why no decision was being issued. But as I have intimated above, after the first couple of months since the application was made the appellant has had the right to make a non-determination appeal. This was not done until the middle of March 2020 and it is also material that in the event I have supported the Council's arguments on the planning merits of the proposal and dismissed the appeal.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the planning guidance, has not been demonstrated. Accordingly the application for an award of costs is refused.

Martin Andrews

INSPECTOR