



Costs Decision

Site visit made on 10 November 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2020

Costs application in relation to Appeal Ref: APP/H5390/W/20/3254641 6 North End Crescent, London W14 8TQ

- 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 Kashif Mehta for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - 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 amendments to previously approved planning permission ref: 2016/04366/FUL granted 16th August 2017 to allow the rear part of the ground floor level to be used as HMO (Class Sui Generis); installation of a new window to the side of ground floor back addition.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 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 applicant seeks a full award of costs on the basis that the Council failed to determine the application within the prescribed time limits, and that it failed either to cooperate sufficiently with the applicant or keep to deadlines.
4. Paragraph 047¹ of the PPG sets out examples of unreasonable behaviour which may give rise to a procedural award of costs, including a lack of co-operation with the other party or parties and failure to adhere to deadlines. Paragraph 048² states 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. The original planning application was submitted on the 27 September 2019. Following the submission of a flood risk assessment the application was made valid on the 5 November 2019, on which date the Council wrote to the

¹ Reference ID: 16-047-20140306

² Reference ID: 16-048-20140306

applicant advising that the deadline for determining the application was 31 December 2019. There is no evidence before me indicating that the Council sought formally to extend the deadline for determining the application, although I note the applicant's comment that they '*made all effort to accommodate the delays in granting the LPA an extension of time*'.

6. The Council contacted the applicant on 30 December 2019 to arrange a site visit, which took place on 7 or 8 January 2020 (the evidence before me is ambiguous on this point). On several occasions between 20 January and 24 March 2020 the applicant contacted the Council to find out when a decision might be issued, though no firm deadlines were ever offered by the Council. I am not aware of any further correspondence between the parties between 24 March and 21 May 2020, when the applicant again contacted the Council asking for a decision date. On 2 June 2020 the applicant e-mailed the Council indicating that unless a decision was issued within 24 hours an appeal would be lodged. The case officer responded the same day stating:

'I had begun assessing the proposal last week as we had discussed however, there are aspects of the development that I first need to clarify before we can make a full assessment of the proposal and issue a decision. I am in contact with our HMO licensing team in regards to the suitability of the proposal.'

No decision was forthcoming before the appeal was subsequently submitted, dated 16 June 2020.

7. There are three main elements to the Council's response to the costs claim. The first is that its handling of the planning application was affected by the case officer being on annual leave and subsequently having a backlog of casework. It is explained that in the period between the application being validated on 5 November 2019 and the site visit on 7 or 8 January 2020, during which time the deadline for it being determined passed, the case officer allocated to the application was due to be on annual leave from 25 November to 18 December 2019. This annual leave was then unexpectedly extended to 27 December 2019, which of course also encompassed part of the Christmas period, and on returning to the office the case officer had a backlog of applications which had accumulated in his absence.
8. The second element relates to impact of the Covid-19 lockdown from late March, when the Council's officers began working from home and had to deal with different IT systems and adapting to new working conditions, as well as the ongoing high caseload.
9. The third and final element is that, from 28 May 2020, the Council identified 'several aspects of the proposal that were of concern', but that it was unable to issue a decision as it needed to undertake further internal consultation and was still waiting for further comments from its HMO Licensing team.
10. I understand in general terms the difficulties facing local authorities in terms of resourcing and staffing planning departments from personal experience, and I note also the case officer's e-mail comment to the applicant on 3 March 2020 that he and other staff were picking up the caseload of two colleagues who had recently left the Council in quick succession. Moreover, at the end of 2019 the impact of Covid-19 on the Council's working arrangements could not possibly have been foreseen. Broadly, I am therefore not unsympathetic in respect of these matters. However, none of the elements of the Council's response

satisfactorily explains either individually or in combination why it was apparently little closer to issuing a decision in late May 2020 than it had been when the deadline for determining the application originally passed almost five months earlier.

11. None of the information before me suggests that the planning application raised complex issues for the Council to assess. It seems to me unlikely, particularly in the light of subsequent events, that the case officer unexpectedly extending their period of annual leave over Christmas 2019 would have made any difference to whether or not the planning application would have been determined by the 31 December 2019 deadline. Two and a half months passed between the site visit in January 2020 and the beginning of the Covid-19 lockdown in March 2020 when officers began working from home, but there is no evidence before me to suggest that the Council made any substantial progress in determining the planning application in that period. Given that the planning application was for an additional bedroom within an existing HMO, it is surprising that the Council was still seeking advice from its HMO Licensing team as late as the end of May 2020.
12. Taking all of these points together, it is clear that the Council's communication and case management have fallen well short of what the applicant could reasonably expect. The Council did not adequately explain the delays in determining the planning application, nor after the original 31 December 2019 deadline had passed was it able to offer a date by which a decision might be expected. Given the lengthy timescales involved in dealing with the application, I consider that this amounts to unreasonable behaviour on the part of the Council.
13. The Council is of the view that, had it issued a decision prior to the submission of the appeal, it would not have been unreasonable for it to have refused the planning application on the basis of its concerns about the quality of the proposed residential accommodation. That may be so, but it entirely ignores the fact that when faced with the appeal, it did not submit a statement of its case or even a draft of the case officer's report. Consequently, the grounds on which the Council would have refused the planning application were discernible only from the e-mail exchanges between the parties (set out in the applicant's appeal statement) and a brief part of its response to the applicant's costs claim. That does not add up to a proper explanation as to why permission would not have been granted. It therefore also amounts to unreasonable behaviour in my view, a view which is not alleviated by the fact that I have dismissed the appeal.
14. Turning to the issue of unnecessary or wasted expense, the failure by the Council to determine the application or provide a timescale for determination led directly to the applicant submitting the appeal. Although I have dismissed the appeal, the applicant incurred expense in preparing their appeal documents. The Council's actions have meant that the appellant has incurred unnecessary expense and an award of costs is justified.

Conclusion

15. For the reasons set out above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is therefore justified.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Hammersmith & Fulham shall pay to Mr Steven Wynne, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to the Council of the London Borough of Hammersmith & Fulham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Cryan

Inspector