



Costs Decision

Site visit made on 17 November 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 8th December 2020

Costs application in relation to Appeal Ref: APP/N4205/W/20/3258669 69 Thicketford Road, Bolton BL2 2LS

- 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 M Ahmed for a full award of costs against Bolton Metropolitan Borough 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 change of use of ground floor from retail (Class A1) to café (Class A3) including outdoor seating at front together with alterations to shopfront, erection of staircase at rear and self-contained flat to first floor.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Applications for costs should clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. In this case, the applicant is seeking to recover full costs including the planning application fee, and agent's time during the processing of the application and the application for the award of costs. However, the PPG is clear that while an applicant can claim for costs directly related to the appeal, they cannot claim for costs relating to the original planning application. The applicant has not provided details of expenses incurred in relation to the appeal.
4. In respect of cases where the Council failed to determine the application, the PPG 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 appellant a proper explanation. In any appeal against non-determination, the planning authority is required to explain why it failed to reach 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 Council acknowledged receipt of the application, dated 20 February 2020, on the 26 February 2020, at which time it advised that if it had not been determined by 19 April 2020 the applicant would have a 6 month period within which to appeal against non-determination. The Council did not contact the

- applicant during the determination period and it failed to determine the application within the prescribed period.
6. The applicant requested an update at the beginning of June 2020. The Council replied several days later, apologising for the lack of contact and explaining that it had been unable to carry out the site visit, as a result of the Covid-19 pandemic restrictions, but it hoped to issue the decision by 19 June 2020. The application was not determined and the applicant subsequently requested further updates during July 2020. On 24 July 2020, the Council responded, apologising and explaining that the delay was due to the officer's ill health and associated resourcing issues. Following a further email from the applicant on 27 August 2020, the Council replied at the start of September 2020, explaining that the officer had again been ill and unable to work.
 7. On 09 September 2020, the Council sent the applicant a draft decision notice and requested an extension of time until 10 September 2020 to allow the approval decision notice to be issued. However, the applicant did not agree the extension of time and the appeal had already been made, such that the Council could not then determine the application.
 8. In its evidence to the appeal, the Council explained that it would have approved the application if it had determined it. As can be seen from my appeal decision, I concurred with the Council's assessment and allowed the appeal. Therefore, it is clear that the appeal would have been avoided if the application had been determined by the Council.
 9. The applicant's frustration relating to the delay in the processing of the application, the Council's lack of communication and its failure to determine the application in a timely fashion, is understandable. Nevertheless, the delay was due to severe resourcing issues caused by the Covid-19 coronavirus pandemic. In this regard, and irrespective that the Council did not explain the delay within the prescribed time limit, I consider that the disruption to normal working and associated resourcing issues due to the pandemic are exceptional mitigating circumstances in this case.

Conclusion

10. Notwithstanding that the applicant will have incurred some costs in the appeal process, I find that unreasonable behaviour on the part of the Council, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Sarah Manchester

INSPECTOR