



Costs Decision

Site visit made on 14 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Costs application in relation to Appeal Ref: APP/D1780/W/20/3259463 73 Stoneham Lane, Southampton SO16 2NZ

- 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 Mrs Wendy Hunter of D&W Hunter Limited for a full award of costs against Southampton City 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 the erection of number one two-bedroom detached bungalow. Demolition of existing double length garage and erection of new double garage.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant has explained that the application for an award of costs is based on the procedural failings of the Council. In particular this regards its complete lack of communication for 6 months from the time the application was validated with no contact possible with the case officer about the planning application. No attempt was made by the Council to arrange an extension to the deadline. It is explained that the planning appeal was the only means left to the applicant to move forward with this application.
4. The applicant has detailed a series of phone calls to the Council to seek contact and only ever received an automated response that the line was currently closed. This was the case, with documented evidence, including during September. It is explained that no other option via the phone system was available to contact the case officer. It is accepted that with the Covid pandemic there was a need to be flexible and reasonable and the applicant believes that they were as understanding as possible but with a total lack of response from the Council over such a prolonged period it left no alternative but to appeal.
5. The applicant was unaware that the case officer was preparing a report because of the lack of communication. It is said that even taking into account the pandemic the Council has acted unreasonably and if it had engaged with

- the applicant any planning matters could have been resolved amicably without the need for an appeal.
6. The Council has responded that the application was submitted close to the start of the pandemic lockdown period where the Council adopted a transition to full time home working and this resulted in a number of technical and practical issues. This led to the case officer only being contactable by e-mail for periods and a substantial build-up of work, including with the appeal scheme. The Council explain that the telephone issue was resolved in August during which it is explained that nominally normal service resumed.
 7. The Council has explained that the applicant had the benefit of pre-application advice and it was in the process of issuing a decision when the appeal against non-determination was made.
 8. The Council accepts that the application deadline period was well exceeded without an extension of time being sought and acknowledges that the delay as a result of issues associated with the Covid pandemic were excessive in this case. However, the case is made that it is not considered that the delay in this regard is sufficient to represent unreasonable behaviour or that the appellant had truly exhausted their recourse to move forward the application as set out.
 9. Examining these matters, the Guidance explains that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage¹ and provides a series of examples which indicate the type of behaviour that may lead to an award of costs. The Guidance sets out that 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. I note that the Guidance in relation to costs awards sets out that the Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.
 10. In this case, the applicant has been sympathetic to the circumstances of the Council, sought to initiate communication and waited to allow the Council to respond and determine the application. The Council appears not to have communicated at all from the point the application was validated and this is clearly regrettable and any communication, even to acknowledge the delay and explain possible time periods for processing the application, would have been expected.
 11. However, the Council like many other organisations would have been presented with exceptional and unprecedented administrative challenges during this period. The application happened to be submitted at about the start of the most challenging period. It was open for the applicant to appeal against non-determination earlier although I can understand the applicant's wish to work with the Council to try to resolve any outstanding matters.
 12. The applicant did have the benefit of a fairly detailed pre-application response from the Council which set out the main issues. This expressed concern with elements of the proposal. The recommended reasons for refusal, particularly in respect of the impact on the character and appearance of the area, are generally consistent with the pre-application advice. Consequently, this

¹ Although behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

information indicates to me that the appeal could not have been avoided as the Council would have refused the proposal in any case.

13. In addition, it appears that the objections from the adjoining occupiers were available to view on the Council web site. The concerns raised in the pre-application advice and the range of objections from adjoining occupiers were all matters that needed to be covered at the appeal stage and I identified them as main issues in the decision. There was, therefore, no wasted expense in the planning material that was submitted at the appeal stage because it was all necessary to cover the substantive matters.
14. To conclude, while the lack of communication from the Council during the time it had to process the application was clearly regrettable, there were extenuating circumstances that it is necessary to take into account. The appeal could not have been avoided as the Council would have refused the application in any case and all the material submitted at the appeal stage was necessary to seek to address the main issues.
15. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, and given the exceptional and extenuating circumstances raised by the Covid pandemic, I cannot agree that the Council has acted unreasonably within the meaning explained within the Guidance and the appeal could not have been avoided. Accordingly, the applicant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR