
Costs Decision

Site visit made on 8 December 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Costs application in relation to Appeal Ref: APP/R0660/W/20/3258243 10 Town Lane, Mobberley WA16 7PY

- 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 Caleb Hutchins for a full award of costs against Cheshire East 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 rear ground floor extension roof alterations and new dormers.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 application for a full award of costs is on the basis that the Council failed to determine the planning application within the statutory timescale and that the application remained undetermined for some time beyond this statutory period without explanation. The applicant suggests that this left them with no alternative other than to appeal against non-determination.
4. Planning Practice Guidance indicates that a local planning authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance states that if the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay. Where this leads to an appeal against non-determination, they should also explain why permission would not have been granted had the application been determined within the relevant period.
5. The Council registered the application on 21 April 2020 and advised that a decision was due by 16 June 2020, the statutory deadline. A site visit took place on the 2 June 2020, this would appear to have been delayed due to Covid-19 restrictions, including the first national lockdown and when it was safe for the Council to do so. At the time of the site visit a site notice was placed at the site for public consultation which resulted in this not being completed until the 23 June 2020. However, it does appear that the Council did not advise the applicant of this and although there was an explanation given it was not

- forthcoming until the applicant requested the reasons why in an email dated 5 June 2020.
6. The Council Officer was unable to offer reasonable timescales for the determination of the applicant's application but advised on 9 July 2020 that they were in the process of drafting up a report but had concerns over the hipped roof style. Further emails were sent by the applicant's agent on 13, 22 July 2020 and 4, 7 August 2020 seeking a further update on the progress of the application and refusing to agree any further extensions of time. It appears there was no response to these emails and subsequently the applicant submitted an appeal on 24 August 2020.
 7. The Council's failure to determine the application is a matter of serious concern and in this case has fallen significantly short of nationally prescribed expectations. I appreciate that this has/is a challenging time for both the Council and the applicant with ongoing national restrictions and that developers are encouraged to agree extensions of time where necessary.
 8. However, the Council initially advised the applicant's agent that it was experiencing 'a large backlog' that had delayed determination dates by a number of weeks. A further period of over two months passed following this initial correspondence without the application being determined with limited contact from the Council despite the applicant's agent seeking further updates. This further period of unexplained delay is unacceptable, and I consider this to amount to unreasonable behaviour by the Council during the procedure leading up to the appeal.
 9. During the appeal process the Council provided a timely and comprehensive explanation as to why it considered the proposed development to be unacceptable and thereby indicating why it would have refused planning permission. These matters which have been raised were one of a fundamental disagreement between the parties which could have only been resolved by way of an appeal. I am therefore satisfied that the Council fully cooperated, in a timely manner, throughout the appeal process.
 10. I turn then to the matter of unnecessary or wasted expense. The applicant submitted a short Statement of Case and copies of email correspondence between the applicant's agent and the Council in the lead up to the appeal. The applicant did provide final comments in response to the Council's statement; however, this response is straightforward and has involved no further assessment, or indeed anything beyond a short rebuttal and disagreement of the Council's position.
 11. As a result, although I find that the Council acted unreasonably in its handling of the planning application, it has not caused unnecessary or wasted expense. Therefore, an award of costs is not justified.

K A Taylor

INSPECTOR