



Costs Decision

Site visit made on 21 January 2021

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Costs application in relation to Appeal Ref: APP/Z1510/W/20/3259303 33 Francis Way, Silver End, CM8 3QX

- 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 Jordan Billinton and Mrs Adroulla Antoniou for a full award of costs against Braintree District Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for the demolition of single storey conservatory and construction of part single storey part two storey rear extension with associated internal alterations.
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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.

The Application

3. The council was unresponsive at times, it failed to determine the application within the statutory period; it also failed to issue a decision in the agreed extension of time; and it further failed to issue a decision when it had all information required and all delegated powers to do so.
4. The council's incorrect assessment of the property and the existing extension also led to wasted time as a second visit had to be scheduled and a report made by the Historic Buildings Consultant who incorrectly identified the existing extension as a conservatory when the extension features no elements from the original glass conservatory with a Crittall frame.
5. The Council's lack of decision was unreasonable and caused the appellants to waste expense.

Conclusions

6. As will be seen from my decision issued on this case, I have found in favour of the appellants on the substantive question of whether the proposed development should be permitted. However, that does not necessarily mean that the claim for costs is justified.

7. In the processing of the appeal application, there was a fundamental difference between the council and its advisor, and the appellants, as to the provenance and value to the conservation area of the existing rear extension. Whilst I was not convinced by the council's case in this regard, it was an arguable case. In addition, I found the council's contention about the value of the first floor window had merit. What is clear is that, had the appeal not been made, the council would have issued a refusal notice, so that an appeal would almost certainly been necessary for the appellants.
8. Whilst it would appear that much time was lost in the council's dealing with the case, it was a case where physical inspection, including entry onto private property, was essential. Unfortunately the planning application was made at a time when the Country began to suffer the full effects of the Covid-19 pandemic. In these unprecedented circumstances, some delay was probably inevitable with, I assume on the basis of general experience, officers working from home. Certainly I cannot find that the council has behaved unreasonably in the circumstances so that it has thereby caused the appellants to incur unnecessary or wasted expense in the appeal process.
9. I therefore conclude, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award for costs is therefore not justified.

Terrence Kemmann-Lane

INSPECTOR