



Costs Decision

Site visit made on 9 February 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Costs application in relation to Appeal Ref: APP/X1118/D/20/3262368 Puffin, Meadowside, Ashford EX31 4BS

- 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 David Lane for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of planning permission for two storey side extension with conversion of attic space to ensuite bedroom.
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1. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 applicant considers that the Council acted unreasonably in both procedural and substantive terms by failing to adhere to the correct determination procedures for the planning application and failing to cooperate with the appellant to resolve matters.
2. Contrary to Article 35(1)(b) of Part 6 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), the Decision Notice for the planning application issued by the Council on 14 August 2020 did not include any reasons for refusal. Although the issuing of that Decision Notice without the refusal reason is said to have stemmed from a technical/clerical error, it was nevertheless unreasonable that full reasons for refusal were not included.
3. However, the Decision Notice was clear in that planning permission was refused. This was not the case with the Tunbridge Wells example put to me, which is thus not particularly relevant in this instance. The submitted evidence indicates that the Council and applicant discussed the proposed development during the Council's determination of the planning application, with for example the Council accepting additional information from the applicant in a positive manner, as per the National Planning Policy Framework. The Council also informed the applicant of their concerns with the proposal and their intention to refuse planning permission prior to determining the planning application. In addition, the Council's Officer Report, signed off on 14 August 2020, includes detailed information on the Council's position and the full reason for refusal which the Council subsequently included in its corrected Decision Notice.
4. The applicant cannot therefore have been uncertain as to whether or not planning permission had been refused, what the Council's concerns were with the planning application and whether there was the need for an appeal if they wished to pursue one. Whether or not the Council had the power to issue a corrected Decision Notice does not lead me to a different conclusion.

5. The submitted evidence indicates that after the Council became aware of the missing refusal reason, it took action to resolve the matter. Although not immediate, the response included issuing the corrected Decision Notice – containing the full refusal reason – within a reasonable time period. The Planning/Case Officer also responded to the applicant to confirm that the error had been resolved, suggested they enter into pre-application discussions to identify possible solutions to the Council’s concerns, and continued to liaise with the applicant including for example by providing the requested details regarding affordability. Despite the lack of advice from the Council’s legal department, it therefore cannot be said that the Council failed to engage with the applicant.
6. It has been put to me that the applicant had insufficient time to prepare/submit the appeal given the Council did not issue the corrected Decision Notice for several weeks and the corrected version included the date of the original. However, given my findings above, this does not lead me to a different conclusion.
7. The lack of full reasons for refusal on the original Decision Notice was unfortunate but also unreasonable. However, the original Decision Notice was clear that planning permission had been refused and the applicant was clearly aware of the Council’s concerns with the proposed development and had been informed of the proposed refusal reason before planning permission was formally refused. Other than the applicant engaging in the pre-application discussions suggested by the Council, there is also little substantive evidence before me which indicates that the appeal could have been avoided by, for example, the use of conditions or planning obligations. Accordingly, although I have come to a different overall conclusion to the Council and have allowed the appeal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR