



Costs Decision

Site visit made on 10 November 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Appeal Ref: APP/Y1945/W/20/3254398

Land adjacent to 132 Estcourt Road, Watford WD17 2PZ

- 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 Bhatti, M Services, for a full award of costs against Watford Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for demolition of existing store building and construction of a new building comprising 1x 2 Bedroom Flat, 2x 1 Bedroom Flats and 1x Studio Flat.
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Procedural Matter

1. The applicant's costs claim does not state whether it is for a full or partial award. However, there is no indication in the application or the appeal documentation that the applicant seeks only a partial award. I have therefore made my decision on the basis that the applicant is seeking a full award.

Decision

1. The application for a partial award of costs is allowed.

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. In summary, the applicant considers that the actions of the Council were unhelpful and grossly delayed the planning application process, which has led to the application for costs. I need to consider therefore, based on the evidence before me, whether the claims are justified, whether Council Officers have behaved unreasonably and if so whether such behaviour has led to unnecessary or wasted expense in the appeal process.
4. The applicant asserts that the Local Planning Authority: i) failed to cooperate with the appellant or others during the planning application process; ii) missed critical deadlines; iii) failed to attend relevant visits, and iv) provided information that was incorrect or declared after the deadline.
5. I note at the outset that the planning application reference number provided on the front cover of the costs application is incorrect.

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6. On pages 71-72 of the appellant's appeal statement is a list of what the appellant claims are the dates of when and what they sought to communicate with the Council, either by email or telephone. I consider any reference to communication that pre-dates the submission of the planning application, which was dated 4 November 2019, to be outside the scope of the process of the appeal at hand. As regards the period post 4 November 2019 and up to and including the determination date of 13 February 2020, the matters referred to can be summarised as relating to: the Council Officer's potential recommendation; consultee comments; s106/Unilateral Undertaking (UU); concerns about not being able to get hold of the designated Officer; concerns about delays in determination, and aspects of the application which were deemed to be problematic.
 7. The Council claim that the summary referred to is selective and incomplete and omits reference to significant communication from the Council during the application process. However, the Council has not provided any evidence to substantiate these claims. I understand that pre application advice was provided in January 2018 and that the Council refused a previous application. I have seen copies of emails dating from 28 January 2020 to 12 February 2020, with one dated 29 January saying that the development remains unacceptable, the appellant should expect a refusal, and that this would be fully explained in the report. In my view this does not amount to significant communication during the process of the application of concern. I consider that I have not been provided with any evidence of the Council acting cooperatively during the application process.
 8. Regarding deadlines, I note that the application date, acknowledgment letter date and anticipated decision date referred to in paragraph 3.2 of the appellant's costs claim do not relate to the planning application of concern. Nevertheless, I can calculate from the date of application to the date of determination that the application was determined in around 17 weeks.
 9. It appears that the parties agreed to an extended determination date, but the Council did not adhere to the agreed date, eventually determining the application around 4 weeks later than agreed. I note that the appellant could have appealed against non-determination of the application after the agreed extended determination date had passed. However, it is my impression that, following the agreed extended determination date the appellant repeatedly sought clarification from the Council regarding the expected determination date, completion of a s106 agreement, and what specific aspects of the proposal the Council still considered were unacceptable. Whilst seeking clarification from the Council on these matters it is understandable why the appellant did not appeal against non-determination at that stage.
 10. Regarding site visits related specifically to the relevant planning application, the appellant asserts that the Council would not actually agree to any visits. The Council refutes this claim. However, again, the Council has not provided any evidence to demonstrate that a site visit, or visits, was/were undertaken during the planning application of concern. That said, I am not aware that the Council is under any statutory obligation to agree to a site visit. Nevertheless, the appellant suggests that should a meeting between the Council Officer and appellant have occurred most of the reasons for refusal could have been avoided.

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- 11.Regarding the matter of the s106/UU agreement, paragraph 1.12 of the Council's statement simply states that a UU has been provided by the appellant, which I understand to mean that a UU has been submitted by the appellant with the appeal. This is factually correct. It may be that Council Officers provided advice and or guidance to the appellant on drafting the UU. However, this does not alter the fact that the appellant has submitted the UU with the appeal. In my opinion, the Council was not seeking to claim that it was not involved in the UU that was eventually submitted.
 - 12.Bearing the above in mind, I consider that the Council did not behave in a cooperative manner during the application process and that it failed to meet the agreed extended determination date. I consider the behaviour of the Council in respect of these matters was unreasonable. Therefore, the question is: did such unreasonable behaviour result in unnecessary or wasted expense in the appeal process?
 - 13.Notwithstanding my conclusions regarding some of the Council's reasons for refusal, the Council was entitled to exercise its judgement on matters relating to the effect of the proposal on the Conservation Area, living conditions of existing and future occupiers, highway safety and refuse storage. I also accept that the Council is entitled to question the accuracy of plans. However, this is a technical matter which I consider could have, and should have, been resolved prior to determination. The lack of cooperation from the Council during the application process left this matter unresolved. As such, I consider that the appellant, in having to address this matter as part of the appeal, has incurred unnecessary and wasted expense in the appeal process.
 - 14.I consider that it has been demonstrated that the Council behaved unreasonably in respect of procedural matters associated with the processing of the associated planning application. Consequently, there has been unreasonable behaviour which has caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG. I therefore conclude that a partial award of costs is justified.

Costs Order

- 15.In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Watford Borough Council shall pay to Mrs Bhatti, M Services, the costs of the unnecessary time spent and the expense incurred by the appellant in the appeals proceedings, described in the heading of this decision, as a result of the unreasonable behaviour outlined.
- 16.The appellant is now invited to submit to Watford Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Williamson

INSPECTOR