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## Costs Decision

No site visit required

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 01 June 2021**

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### **Costs application in relation to Appeal Ref: APP/E0345/X/20/3250600 85 & 87 Longships Way, Reading, RG2 0AJ**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Jasim Mohamad Al-Kuwari for a full award of costs against Reading Borough 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 a certificate of lawful use or development for the amalgamation of two dwellinghouses into one.
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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. This appeal was against a failure to issue a decision within the prescribed period. On that issue the appellant argues the Council gave no substantive reason why they failed to issue a decision or explain why they might have refused the application in the first place.
4. I accept the appellant's agent did chase up the Council a number of times and that before the first lockdown the decision was already late, so that cannot be a comprehensive excuse. The 8 week target passed on 12 February 2020 and the agent emailed several times before and after that date. Eventually the Council did respond on 3 March 2020 to apologise for the delay but they were still waiting for advice from their legal department. However, the case officer said that he thought it would be refused as the *"need for housing is a material change, which is backed up by Policies within our adopted Local Plan"*.
5. Following further chasing from the agent the Council replied on 31 March to say they were under considerable pressure, presumably due to the pandemic, and they were still waiting for advice from their solicitor who was off sick. It now transpires the legal advice was received on the same day, but it seems it didn't help as further clarification was sought. An officer report to support a refusal was drafted in early April, pending the legal clarification, but on the 8<sup>th</sup> April the non-determination appeal was received.

6. I agree there wasn't a great deal of communication from the Council, but what there was did explain the delay and did suggest why the application would be refused. I do not agree that the Council's evidence is inconsistent. Their appeal statement did not say they did not receive any legal advice but they did not receive any *useful* legal advice. This seems to be the case as their timeline shows they were awaiting a clarification of that advice when the appeal was lodged. None of this seems to amount to unreasonable behaviour to me. The appellant knew what the Council thought of their application, that he didn't agree with them is another matter and is why the right of appeal against non-determination exists and was utilised in this case.
7. The argument that the policy refusal was sufficient was subject to the LDC appeal and as I found that on this occasion it was sufficient, it follows there was no unreasonable behaviour in continuing to defend the appeal either.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Simon Hand*

Inspector