



Costs Decision

Site visit made on 19 June 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2021

Costs application in relation to Appeal Ref: APP/U5360/X/20/3264491 362-364 Old Street, Hackney, London EC1V 9LT

- 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 T Smith of Neon City & Sefton Commercial Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - 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 (LDC) for a development described as: "The erection of a two storey roof extension to provide 1 x 2 bedroom self-contained dwelling (use class C3). The effect of the variation would be to add a glazed canopy above the existing entrance at ground floor level."
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) 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 has been made on procedural and substantive grounds and the PPG lists examples of each. The lists are not exhaustive.
4. The PPG states¹ that local planning authorities are required to behave reasonably in relation to procedural matters at appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include a lack of co-operation with the other parties and delay in providing information or other failure to adhere to deadlines.
5. No completed appeal questionnaire or supporting documents were provided by the Council and no appeal statement was submitted. Consequently, as the appeal was the result of the Council's failure to issue a notice of their decision, there has been no official indication of the Council's position on the appeal whatsoever.
6. The PPG² states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a

¹ Appeals - Paragraph: 047 Reference ID: 16-047-20140306

² Appeals - Paragraph: 048 Reference ID: 16-048-20140306

- proper explanation, and, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission³ would not have been granted had the application been determined within the relevant period.
7. From the information available to me, the requisite explanations have not been provided.
 8. The PPG⁴ further states that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
 9. From the case put to me, there were no substantive reasons to justify delaying the determination, the Council has failed to engage in the appeal process at all and emails and telephone calls from the appellant have gone unanswered.
 10. The PPG⁵ states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by failing to determine planning applications, or preventing or delaying development which should clearly be permitted.
 11. In this case, the Council has failed to recognise the legal effect of the deemed discharge of Condition 3. It proceeded to refuse the details submitted to comply with Condition 3 when it no longer had the jurisdiction to do so, meaning the appellant has had to argue their case in this regard unnecessarily in the appeal.
 12. From the information provided, it appears that the Council has experienced a cyberattack. The Council has indicated this has affected its ability to obtain its records and that it is "unable to progress with" any appeals for applications determined prior to 30 September 2020 and appeals against non-determination lodged for applications submitted prior to 30 September 2020, due to its inability to provide any documents.
 13. The Council's only response to this costs application was: "Please be informed that the planning application in question is one of the application that was stuck in the old computer system as a result of a serious cyberattack. [The Planning Inspectorate] was notified, so also the appellant."
 14. Whilst I sympathise with the Council's predicament, it does not absolve the Council of all responsibility for engaging with the appeals process. It was incumbent on the Council to be more cooperative with the appellant and participate in the appeals process. What is more, the evidence indicates the LDC application was made months before the cyberattack. So it does not explain the Council's failure to issue a decision.
 15. The Council has failed to comment on the appellant's statement, or to even confirm its position on the original application or appeal. Moreover, it appears that the appellant has sought to help the Council by resubmitting the application, on more than one occasion. But a lack of engagement or

³ Whilst the PPG uses the word 'permission' this guidance is equally applicable to LDCs

⁴ Appeals - Paragraph: 048 Reference ID: 16-048-20140306

⁵ Appeals - Paragraph: 049 Reference ID: 16-049-20140306

communication from the Council has meant this approach has not made the appeal avoidable.

16. Furthermore, an email dated 1 April 2021 from a Council planning officer, submitted by the appellant, indicates a resubmission would be supported. Whilst this email may have been the informal advice of an officer, it indicates the appeal was entirely avoidable.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

18. 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 the Council of the London Borough of Hackney shall pay to Mr T Smith of Neon City & Sefton Commercial Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Perkins

INSPECTOR