



Costs Decision

Site visit made on 11 May 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2021

Costs application in relation to Appeal Ref: APP/J0405/W/21/3266669 Sloane/Sweda House, New Street, Aylesbury, HP20 2NH

- 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 Marc Green, Oakmont Homes for a full award of costs against Buckinghamshire Council - North Area (Aylesbury).
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for addition of a 3rd floor atop the present building comprising an additional 10 units of accommodation formed by 1 and 2 bedroom flats and external alterations to the facade.
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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) sets out that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. It further advises that a local planning authority is at risk of an award of costs if it unreasonably fails to determine planning applications, or if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The PPG goes on to note 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 proper explanation. It further comments that if an appeal against non-determination is allowed, the local planning authority may be at risk of an award of costs if 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.
4. The prescribed period for determination of the planning application subject of this appeal expired on 24 November 2020. I have been provided with copies of email correspondence dated 12 November 2020 from the Council to the applicant advising that a bat survey would not be necessary and that the case officer would be in contact soon to provide a more detailed update. However, the Council confirms that the original case officer left their post in December 2020 without having continued discussions with the applicant. The application was subsequently allocated to a new case officer on around 14 January 2021, but irrespective of delay in notifying the new case officer and applicant of the allocation, this did not take place until after the applicant had lodged the appeal nearly 7 weeks after the end of the prescribed period.

5. I appreciate that the timescale between the original case officer advising the applicant that they were leaving the Council and the lodging of the appeal was relatively short, and would have included the Christmas and New Year period which may have affected staffing within the Council leading to some delay in internal processes. However, I have no firm information that the Council offered the applicant a proper explanation or kept them informed regarding its failure to determine the application within the prescribed period, either before or after the determination date had passed.
6. Moreover, the second strand of the application for costs relates to the Council only raising requirements for financial contributions and affordable housing at a late stage, and that this was based on responses from the Parks and Leisure and Affordable Housing consultees that were only added to the planning file after the appeal was lodged. The Council confirms that these consultees were not initially approached for comments, putting any decision at risk in terms of its legality.
7. I have no reason to dispute that necessary consultations were carried out promptly following the current case officer's review of the case and discovery that this had not already occurred. Nevertheless, no compelling mitigating circumstances to explain the Council's failure to contact consultees at the appropriate time have been put forward, nor to justify its failure to determine the application within the prescribed timescales. Had the applicant been kept informed of progress and made aware of the contributions being sought by the Council earlier, I have little firm reason to conclude that it would not have been possible for the parties to reach agreement. In addition, the main parties agree that the Council's first putative reason for refusal could have been addressed by a planning condition. I therefore consider it likely that the appeal could have been avoided, and I find that the Council has behaved unreasonably and that the applicant has incurred unnecessary expense in having to pursue the appeal. However, costs may only be awarded where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
8. The delay in the Council obtaining some consultee responses and advising the applicant of the contributions it was seeking meant that the applicant was unable to respond to these matters until the appeal stage. Nevertheless, while I have ultimately reached the view according to the submitted evidence that there are circumstances which mean these contributions should not in this case be sought, the requirements reflect provisions within the development plan and relevant national and local guidance. It seems to me that it would therefore have been necessary for the appellant to address this matter as part of the application in any event, and to meet the costs of preparation of comparable evidence to the submitted Affordable Housing Viability Assessment (AHVA) and Unilateral Undertaking (UU). I am not therefore persuaded that the applicant's expenses associated with these elements of the appeal could reasonably be said to be unnecessary. Accordingly, I do not consider that the award of costs should extend to those associated with the provision of the AHVA and UU.
9. The PPG also confirms that costs unrelated to the appeal are ineligible, and that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. Accordingly, 'property related holdings costs (e.g. finance, insurance, security)' listed within

the costs application as an unnecessary or wasted expense are not a matter for the costs regime.

10. For the reasons above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Buckinghamshire Council - North Area (Aylesbury) shall pay to Mr Marc Green, Oakmont Homes the costs of the appeal proceedings described in the heading of this decision but excluding those costs related to the preparation and submission of the Affordable Housing Viability Assessment and Unilateral Undertaking as described at paragraph 8 above.
12. The applicant is now invited to submit to Buckinghamshire Council - North Area (Aylesbury), to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that 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 Bowyer

INSPECTOR