



Costs Decision

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

an Inspector appointed by the Secretary of State

Decision date: 5th August 2021

Costs application in relation to Appeal Ref: APP/A1910/X/20/3261710 Parker House, Maylands Avenue, Hemel Hempstead HP2 4SJ

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Graham Ellinor (Parker Hannifin Manufacturing Limited) for a full award of costs against Dacorum Borough Council.
 - The inquiry was in connection with an appeal 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 conversion of office building for residential use.
-

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. Much of the applicant's costs submissions, and appeal submissions, are concerned with disputing the Council's interpretation of a planning permission which had led it by notice dated 23 August 2019 to refuse a prior approval application. The applicant also disputes that such a refusal was made in law, but I have found in my decision on the appeal that the above notice did indeed refuse prior approval. The Council subsequently, on 9 April 2021 during the appeal process, conceded that the planning condition of focus (Condition 2 of 4/01045/88) does not have the effect of excluding permitted development rights. The applicant says that no proper reasons were given for this concession, and essentially that it happened only once he had 'pushed for it' and after he had incurred unnecessary expense on related submissions. Further that the original position was wrong due to a failure to obtain proper legal advice, and that the Council's Lead Planning Officer (Mrs Curtain) had not made herself available to answer questions in relation to the above matters. The applicant says that these matters constituted unreasonable behaviour by the Council.
4. However, as I have set out in my decision on the appeal, the lawfulness of the LDC proposal was dependent on whether prior approval had been refused within 56 days of its receipt. Were this the case – as I found it was – whether or not the Council was correct in its reason for that refusal was not determinative of the lawfulness of what was proposed under the LDC application (since the Council's decision to refuse prior approval was of legal effect, having not been quashed).

5. The Council had made the same point clear to the applicant, both before the making of the appeal (email from Mrs Curtain to Mr Garbett of 28 July 2020) and once it had been made (Statement of Case of January 2021). Therefore its later concession on a non-determinative issue in respect to the success of the appeal was of no significance, with or without reasons to the satisfaction of the applicant, and it is not the fault of the Council that the applicant chose to incur expenditure on making arguments about an issue that were not decisive in my consideration of the appeal. Such arguments may, of course, have been very relevant to challenging the original decision on the prior approval decision within the applicable time limits.
6. Even were the applicant correct that the Council had behaved unreasonably in the way it came to its decision on the prior approval application, including as to when and how it applied for legal advice, the remit of the costs application before me is confined to the appeal against failure to determine the LDC application.
7. The fact that the LDC application was not determined by the Council within the statutory period is of no account as the Council made clear why it was resisting the granting of a certificate, and that position was successful on appeal.
8. I do not accept that the Council failed to communicate sufficiently (to below a standard of reasonableness) with the applicant on the LDC application, as evidenced by Mrs Curtain's email of 28 July 2020 (and 15 September 2020 explaining legal advice was being sought) notwithstanding what the applicant has said about having received no response to later emails. Further, Mrs Curtain attended the inquiry and an invitation was put to the applicant's advocate to question her should he wish. The invitation was declined.
9. The applicant says that the Council also acted unreasonably during the appeal as it hadn't sufficiently dealt with the issue of whether its 23 August 2019 notice was materially similar to the 'purported refusal' letter in the *Dunnett* case¹. However, the Council dealt comprehensively with that issue in written submissions and orally at the inquiry. It is not unreasonable behaviour that the Council has a different view to the applicant.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andrew Walker

INSPECTOR

¹ *Dunnett Investments Ltd v Secretary of State* [2017] EWCA 192