

Costs Decision

Site visit made on 28 July 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Costs application in relation to Appeal Ref: APP/P1560/W/20/3260601 Land Adjacent 3 Bentley Road, Weeley Heath CO16 9DT

- 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 PSCS Ltd for an award of costs against Tendring District Council.
 - The appeal was made against a failure to give notice within the prescribed period of a decision on an application for planning permission for erection of a detached 3 bed bungalow with associated car parking.
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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 advises that costs may be awarded where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's basis for claiming full costs relates to the Council's alleged unreasonable behaviour with regard to procedural issues, specifically not explaining the reasons for not reaching a decision within the relevant time period, and why permission would not have been granted had the application been determined within the relevant period. The second ground relates to the alleged failure by the Council to provide any evidence to substantiate its case.
 4. With regard to the first ground, in correspondence from senior officers to the applicant the Council states that it was entirely unacceptable that the decision notice was not issued promptly following the Committee decision to refuse permission. However, subsequent to this it did issue an appeal statement that include its three putative reasons for refusal had the application been determined in time.
 5. The Planning Practice Guidance advises that in cases such as this where the appeal is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State 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
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altogether¹.

6. The Council indicates that the reason for the delay was due to staff shortages and operational challenges caused by the Covid-19 pandemic. While I note these arguments, by its own admission the Council accepts that there were substantial failings on its part in not explaining the reason for the delay. However, for an award of costs to be made national guidance also requires there to be evidence that better communication with the applicant would have enabled the appeal to be avoided altogether.
7. The relevant Council Committee decided to refuse permission contrary to the recommendation made by officers, and the reasons for this decision were subsequently included in the Council's appeal statement. Therefore, due to this decision and the reasons for it, it cannot be said with any certainty in the circumstances of this case that better communication with the applicant would have enabled the appeal to be avoided altogether. As this is the test required by national guidance, I cannot find unreasonable behaviour on the Council's part that has resulted in unnecessary or wasted expense for the applicant in pursuing the appeal as a whole.
8. Turning to the substance of the Council's case, as already noted there are three putative reasons for refusal. The first concerns the effect on character and appearance. The appeal statement refers to the nature of the plot and the context for the proposed development as well as relevant development plan policies. While the analysis related to this issue is relatively limited, considerations relating to the effects of development on local character involve matters of judgement. Based on the appeal submissions, and acknowledging that matters of judgement were involved here, on balance I consider that the Council's assessment is not unreasonable and there is sufficient information to support the reason for refusal.
9. However, this is not the case with regard to the second issue concerning the effect on neighbours' living conditions. The Council undertook an assessment of the effect on the nearest neighbouring property and found that any harm could be overcome by an appropriate condition. No other evidence was provided to support the reason for refusal with regard to loss of privacy. On the other issue, concerning future occupiers' loss of outlook from bedroom windows, it concluded in the appeal statement that the arrangement is considered adequate. As such, there is no evidence to support the second reason for refusal and, therefore, it was unreasonable to rely on this.
10. The final reason for refusal concerns the effect on highway safety. With regard to this issue, the relevant section of the appeal statement simply repeats the wording of the reason for refusal, with no additional analysis or explanation for the decision. This is a failing in its own right to substantiate the reason for refusal, but particularly so where the Highway Authority found no harm and that any concerns about safety could be addressed by appropriate conditions. Therefore, I find that there is no evidence or analysis to support the third reason for refusal and so the Council's approach in this regard is unreasonable.

¹ Paragraph: 048 Reference ID: 16-048-20140306.

11. Accordingly, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Tendring District Council shall pay to PSCS Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's second and third reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Tendring District 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.

J Bell-Williamson

INSPECTOR