
Costs Decision

Hearing Held on 8 July 2021

Site visit made on 9 July 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Costs application in relation to Appeal Ref: APP/V1505/W/20/3251827 3-31 Runwell Road, Wickford, SS1 7HG

- 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 Explore Living Limited for a full award of costs against Basildon District Council.
 - The hearing 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 planning permission for the erection of two, 6 storey blocks to provide 122 apartments (76 one bed and 46 two bed units) with parking spaces and associated access and infrastructure.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals are expected to meet their own costs. Costs can be awarded where, amongst other things, the following conditions apply: the party against whom a cost awards is sought has behaved unreasonably and that unreasonable behaviour has led the party applying for costs to incur wasted or unnecessary expenditure in the appeal process.
3. In summary, it appears that the applicant considers that the Council behaved unreasonably in that it:
 - delayed the consideration of the appeal application and that an earlier determination might have led to a different decision;
 - has not properly detailed its objection to the appeal proposal;
 - introduced a new matter at a late stage, and
 - brought into question in the appeal process a previously agreed position.

The applicant considers that in order to address these matters they have incurred wasted or unnecessary expenditure. I shall deal with each of the matters in turn before coming to a conclusion on the costs application as a whole.

Unreasonable delay in determining the appeal application

4. It is clear from the evidence supplied by both parties that the start of the Covid 19 pandemic in early 2020 delayed the consideration of the appeal application due to the need to move from physical planning committees to virtual meetings. The Covid 19 pandemic has been unprecedented in recent times and has led to disruption of normal business across all areas. It appears to me that the Council reacted to the pandemic in a similar manner to others throughout the country. This meant that they were able to start virtual committee meetings in May, a delay of around two months. The appeal application was considered by a Planning Committee in June. I do not consider, having regard to the circumstances of the pandemic and the need to radically alter how planning committees operated, that this delay is unreasonable, nor would it have led the appellant to incur additional costs over and above those related to the pandemic.
5. In terms of whether the application would have been granted if it had been heard by the Planning Committee at an earlier stage, there is no indication in the evidence that this would have been the case. Indeed, it appears that the Planning Committee had refused similar applications on the site which had been subject to positive pre-application discussions with officers. I therefore consider that there is no evidence to show that an earlier determination would have led to a different decision on the application. Therefore, I do not consider that the delay led to the applicant incurring wasted or unnecessary expenditure.

The Council had not properly detailed its reason for refusal

6. The reasons for the Council objecting to the appeal proposal included matters relating to the buildings' height, scale, massing, and design. It also made reference to it being intrusive and it harming the character and appearance of the area. In addition, it referenced the relevant policies of the development plan and emerging plan development relevant to the application. Whilst I agree that it did not specifically state how the appeal proposal would harm the character and appearance of the area, it was clear that this related to the height, scale and massing and design of the building. This would have allowed the applicant to understand the Council's objection to the appeal proposal. I therefore do not consider that any lack of precision in the Council's objection to the appeal proposal constituted unreasonable behaviour which has led to the applicant incurring wasted or unnecessary expenditure.
7. In terms of the application of the so called 'tilted balance', the housing land supply position in the District was referred to in the officer's report to the Committee, and therefore was before members when they made their decision. It was therefore implicitly taken into account in the decision taken by the Planning Committee.
8. Moreover, Planning Committees are entitled to come to their own conclusions based on the evidence of the case. In this case, whilst I took a different view to the Committee on the merits of the application, the argument put forward by the Council in support of its case was adequately supported by evidence.

New matters introduced at a late stage in the process

9. The issue of the collection of refuse from the proposed buildings was raised by the Council during the appeal process. However, this appears to have arisen due to the appellant being unable to implement the refuse collection arrangements detailed in the original planning application. In these circumstances it was incumbent upon the applicant to detail new collection arrangements and for the Council to be able to comment upon them. I therefore do not consider that the Council introduced a new matter in relation to the appeal as it was responding to changes to the proposal initiated by the applicant.

Change in the previously stated position on the 2007 planning permission

10. During the course of the appeal the Council appeared to change its position on whether the planning permission granted on appeal in 2007¹ was still capable of implementation by virtue of a material commencement having been made. It is clear from the Committee report that the Council consider that the 2007 permission was still 'live'. However, in the appeal documentation the Council stated that this could only be established through the submission of a Certificate of Lawfulness.
11. Whilst I can understand the applicant's position in relation to the apparent change in the Council's position on the 2007 permission, the Council is correct in stating that the method by which the lawfulness of the 2007 planning permission is obtained is through the submission of an application for a Certificate of Lawfulness of Existing Use or Development (CLUED). However, matters such as the works that have been undertaken in order to implement the 2007 permission and the discharge of condition are still material considerations in this appeal and the applicant would still have had to prepare and submit evidence on this matters. Consequently, I do not consider that the Council's apparent change of position on the 2007 planning permission is unreasonable behaviour which has led to the applicant incurring unnecessary or wasted expenditure in this appeal.

Conclusions

12. I therefore conclude having taken into account the matters raised by the applicant, as required by paragraph 033 of the PPG, that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expenditure has not been demonstrated by the applicant. For these reasons an award of costs is not justified.

Peter Mark Sturgess

INSPECTOR

¹ Planning Application Ref: 06/00001/FULL and Appeal Ref: APP/V1505/A/06/2026185, allowed 24 May 2007