
Costs Decision

Site visit made on 27 September 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Costs application in relation to Appeal Ref: APP/B1415/W/20/3271440 5 Carisbrooke Road, St Leonards-on-Sea, East Sussex TN38 0JS

- 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 Ms Sarah Lloyd for a full award of costs against Hastings Borough Council.
 - The appeal was against the refusal of planning permission for change of use of single family dwelling house (C3) to house in multiple occupation (HMO)(C4).
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council failed to determine the application within the statutory 8 week period. An extension of time was agreed but the delays continued until the appellant was advised, some 20 weeks into the application, that marketing information was required to demonstrate compliance with development plan policy relating to the retention of family homes. Even allowing for the illness of the case officer, the time taken to communicate this position was excessive.
4. The PPG explains that 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 permission would not have been granted had the application been determined within the relevant period. Although the Council has indicated the reasons why permission would not have been granted, it has not given a satisfactory explanation for the delay in determining the application. Consequently, the appellant has good reason to feel aggrieved.
5. However, there are two prerequisites for a costs application to be successful. Firstly, there needs to be unreasonable behaviour and secondly this must have caused another party to incur unnecessary or wasted expense in the appeal process. The PPG makes clear that local planning authorities are at risk of an award of costs, if an 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.

6. The Council's tardy handling of the application constitutes unreasonable behaviour. However, as set out in my decision, there were sound reasons for withholding permission. The appeal could not have been avoided without the appellant submitting marketing information to demonstrate that there is no demand for the premises as a single family dwelling. It is unrealistic to expect such information to be provided within the lifetime of the planning application. The appeal was unavoidable and the costs incurred by the appellant in preparing for the appeal were a necessary part of the process.
7. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated. An award of costs is not justified in this case.

Robert Parker

INSPECTOR