The Planning Inspectorate

Costs Decisions

Site visit made on 14 September 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/11/2021

Costs application A in relation to Appeal A: APP/R3650/X/20/3260604 and application B in relation to Appeal B: APP/R3650/X/20/3265567 South Fork, Wrotham Hill, Dunsfold GU8 4PA

- The applications are made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- Application A is made in relation to Appeal A and Application B is made in relation to Appeal B, both made by Mr David Stedman for a full award of costs against Waverley Borough Council.
- Appeal A was 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 for internal doors and positioning of new windows.
- Appeal B was against the refusal of a certificate of lawful development for internal doors and positioning of new windows.

Decision

1. Application A for an award of costs is dismissed.

2. Application B for an award of costs is dismissed.

Reasons

3. Planning policy guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Application A

4. The applicant's case is that the Council failed to provide any reasoning for the delay in determining the LDC application, despite several attempts on the applicant's part to secure information. Furthermore, it was the applicant's assertion that the works did not constitute development, whereas the Council indicated that they would refuse to grant a certificate on the basis that the works were not permitted development.

5. The PPG confirms that the delay in providing information or other failure to adhere to deadlines may give rise to a procedural award against a local planning authority. The determination as to whether the proposed works constituted development turned on the wording in section 55(2) of the 1990 Act[1] as amended and not on the existing situation on site. The Council misdirected itself to the need to assess the proposed works against the GPDO[2].

[1] Town and Country Planning Act 1990 as amended
[2] Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

6. In failing to adhere to the statutory deadline, without providing any explanation for that delay, the Council acted unreasonably. However, the Council went on to refuse a further LDC application for the same proposed development. As such, it would be reasonable to conclude that the Council would have refused this application had the appeal not been submitted. The applicant would not therefore have been spared the cost of appealing the Council's decision.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Application B

8. The applicant's case is that the Council failed to issue a split decision when it was clear that they considered part of the proposed works, the installation of internal doors, to not be development.

9. The Council concluded that the positioning of new windows is development, a conclusion that I agree with. Section 193(4) confirms that a certificate under section 192(b) may be issued "*where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them …*". The Council could have issued a certificate for that part of the proposed works that is not development, as I have done. However, the appellant's appeal statement makes it clear that they were seeking to secure a LDC for both operations and not just the internal doors. As such, I consider it more than likely that an appeal would have been pursued for that part which may have been refused in the event that a split decision had been made by the Council. The applicant would not therefore have been spared the cost of appealing the Council's decision.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Madge

INSPECTOR