
Costs Decision

Site visit made on 11 October 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Costs application in relation to Appeal Ref: APP/H0738/W/21/3280308 The Mile House, Durham Road, Stockton-On-Tees TS19 9AA

- 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 Cliff Court (Redcar) Developments Ltd for a full or partial award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for alterations to, and the change of use of, the former Mile House public house to accommodate a drive thru coffee shop (Class E) and one retail unit (Class E) with associated car and cycle parking.
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Decision

1. The application is allowed and full costs are awarded.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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. The costs application is made on the grounds of delays to the determination of the application.
3. In this instance the Council failed to give notice within the prescribed period of a decision on an application for planning permission. The Council's handling of a planning application prior to the appeal can be taken into account in considering an award of costs.
4. The evidence indicates that the application was submitted on 24 December 2020 and acknowledged by the Council on 21 January 2021. Thereafter, on 31 March, it appears that an Air Quality Assessment (AQA) was requested. This delayed the progress of the application and no reason has been provided for the delay in requesting this document.
5. The evidence indicates that in May 2021 the Highways, Transport and Design manager raised no objections to the application. However, in June it appears that the Council's position on highways matters changed as a result of concern over continued queuing at drive thru premises on the back of the Covid-19 pandemic. However, these concerns have not been well evidenced and the altered position in relation to highways matters further delayed the progress of the application.
6. The application remained undetermined on 4 August 2021 when the appeal against non-determination was submitted. Subsequently, the application was

referred to the planning committee on 1 September 2021 where it was resolved by members that they would have been minded to refuse the application on grounds relating to pedestrian and vehicle manoeuvrability and congestion and the free flow of traffic. Both reasons for refusal indicate that 'insufficient information' had been provided to address concerns on both grounds.

7. In relation to decision-making the Framework¹ requires that local planning authorities should approach decisions on proposed development in a positive and creative way. They are also required to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area.
8. The evidence suggests that the appellant was forthcoming in providing the information requested by the Council during the course of the planning application and would likely have been able to provide any reasonable information the Council required to enable it to come to a firm conclusion on the application.
9. The reasons on which the Council would have been minded to refuse the application were formalised after the appeal for non-determination was submitted. However, irrespective of this, they reveal that concerns of the Council were based on a lack of information. There is nothing to indicate that the required information could not have been sought from and provided by the appellant during the course of the application.
10. There are no substantive reasons before me to justify the delays that the appellant has experienced through the application process. It is likely that better communication on behalf of the Council combined with a more proactive approach to enable the appellant to address their concerns could have avoided the need for the appeal.
11. The Council has therefore behaved unreasonably and this unreasonable behaviour has directly caused the appellant to incur unnecessary or wasted expense through the preparation and submission of the appeal.

Conclusion

12. Local Planning Authorities are at risk of an award of costs in relation to appeals against non-determination. In line with the PPG² costs can be awarded in such circumstances if the appeal is allowed and there are no substantive reasons to justify delaying the determination of the application and better communication with the applicant would have enabled the appeal to be avoided altogether.
13. I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A full award of costs is subsequently justified.

Costs Order

14. 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 Stockton-on-Tees Borough Council shall pay to Cliff Court (Redcar)

¹ National Planning Policy Framework 2021.

² Paragraph: 048 Reference ID: 16-048-20140306.

Developments Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The applicant is now invited to submit to Stockton-on-Tees Borough 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.

T J Burnham

INSPECTOR