

Costs Decision

Site visit made on 9 November 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2021

Costs application in relation to Appeal Ref: APP/X1165/W/21/3279027 443 Babbacombe Road, Torquay TQ1 1HW

- 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 Miss Toni Keech for a full award of costs against Torbay Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for Demolition of garage and erection of replacement building to contain garage, annexe accommodation and office.
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may relate to either the process or the issues arising from the merits of the appeal. In this case, the applicant sets out that they wish to claim full costs because the Council failed to make a decision on the planning application and inappropriately considered it as a separate dwelling.
3. For appeals against non-determination, the PPG also sets out that the local planning authority should explain their reasons for not reaching a decision within the relevant time limit and explain why permission would not have been granted had the application been determined within the relevant period. In addition, it states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications. An example of this is given as persisting in objections to a scheme which an Inspector has previously indicated to be acceptable.
4. The evidence before me indicates that the Council and applicant did correspond before the appeal was submitted. This includes: the Council providing the applicant with a draft list of three reasons for refusal; and a response from the applicant's agent questioning two of the proposed reasons – relating to parking requirements and whether the appeal proposal constituted a separate dwelling – and setting out that they would appeal the Council's decision.

5. Although the Council indicated in its correspondence with the applicant that it would soon issue its decision, refusing planning permission on the basis of the three reasons it had set out, a decision was not forthcoming. The applicant sets out that it therefore had no option but to appeal for non-determination. Be that as it may, for the reasons above and on the basis of the submitted evidence, the proposed development was likely to be taken to appeal irrespective of whether the Council issued its decision. The appeal could thus not have been avoided even if the Council had determined the planning application.
6. After the appeal was lodged, the Council provided its Planning Officer Report. Although it does not explain the Council's reasons for not reaching a decision within the relevant time limit, it does set out the Council's concerns with the proposed development and includes one reason for refusal that would have been provided had the Council made a formal decision on the planning application. That reason for refusal – relating to the effect of the appeal proposal on the character and appearance of the surrounding area and the conservation area – is similar to one of the three draft refusal reasons that the Council had previously mentioned to the applicant. It is also sufficiently substantiated by the details in the Planning Officer Report and related to the appeal proposal.
7. Accordingly, the applicant's appeal costs associated with this matter could not have been avoided and would have occurred even if the Council had issued its decision on the planning application and the appeal was instead against the Council's decision to refuse planning permission. The applicant's expense associated with this issue has therefore neither been unnecessary nor wasted.
8. Notwithstanding this, because the Council did not issue its decision and the appeal had to be submitted on the basis of non-determination, it seems to me that the applicant had no alternative but to also address in their appeal submissions the other two matters that the Council informed them would form part of its reasons to refuse planning permission. However, those matters, related to issues which an Inspector had previously indicated to be acceptable, were subsequently not raised at appeal by the Council.
9. The Council did not therefore persist in objections to the scheme that an Inspector had previously indicated to be acceptable. Nevertheless, because the Council did not inform the applicant prior to the appeal being lodged that it no longer intended to continue contesting those issues, the Council has acted unreasonably by raising concerns that it then did not follow up on. This behaviour has resulted in the applicant incurring wasted and unnecessary expense in the appeal process given that their work on those two matters proved not to be necessary once the Council's position became clear at appeal.

Conclusion

10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Consequently, a partial award of costs is justified to cover the expense incurred by the applicant in their preparation of the appeal statement and supporting documentation for the two matters that the Council initially indicated would form refusal reasons but which it ultimately did not contest at appeal.

Costs Order

11. 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 Torbay Council shall pay to Miss Toni Keech the costs of the appeal proceedings described in the heading of this decision, limited to those costs at the appeal stage incurred in addressing the two matters that the Council initially indicated would form refusal reasons but which they did not ultimately contest at appeal.
12. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

T Gethin

INSPECTOR