
Costs Decision

Site visit made on 22 September 2021

by S. Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th December 2021

Costs application in relation to Appeal Refs: APP/Q5300/W/20/3263960 & APP/Q5300/Y/20/3263961

The White Lodge Surgery, 68 Silver Street, Enfield EN1 3EW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, the Local Government Act 1972, section 250(5), and under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3.
 - The application is made by Mr A Halil for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the failure of the Council to issue a notice of their decisions within the prescribed period on an application for the demolition of single storey building at rear and erection of four dwellinghouses in two blocks.
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Decision

1. The application is refused.

Reasons

2. Irrespective of the outcome of an appeal the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour can relate to procedural matters relating to the appeal process or substantive matters, issues related to the planning merits of the appeal. For example, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. 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. It adds that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of 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.
4. The applicant contends that an award of costs is justified for the following reasons: (i) the Council failed to 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 (ii) the

Council gave no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether (iii) the Council prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations (iv) the Council refused to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

5. In response the Council has set out that there had been pre-application discussion with the applicant about the case and that a detailed and robust assessment had been provided. That assessment set out the Council's concerns, many of which are mirrored in the reason for refusal. Some of those concerns related to insufficient information provided. In addition, the Council advises that the determination of the applications within 8 weeks of the validation period were highly constrained due to national lockdown measures. Given the nature of the application and the specialisms required for its assessment, a full and robust assessment, in the absence of requested information and an expectation that it would be determined within an 8-week period, during national lockdowns, was an extremely complex and difficult task to achieve.
6. The applications were registered by the Council on 18 May 2020 giving a target date of 13 July 2020 for determination. However, I note the Council's letter to the applicant dated 22 May 2020 clearly states that due to the high number of planning applications and difficulties in recruiting staff, they could not guarantee a decision by that date.
7. Correspondence indicates that the appellant made a number of attempts to communicate with the Council just before and just after the 8 week target date. The 'holding' responses to that correspondence from the Council refer to issues obtaining specialist conservation advice due to a change in personnel and resulting from a period of summer leave. The staffing difficulties of the Council is largely a matter for itself to resolve and to ensure that a satisfactory service is provided. Nevertheless, the impacts of the coronavirus pandemic in 2020, in particular the lockdown, have been extraordinary and have affected many processes and is clearly background information that has relevance.
8. It seems to me that the Council's failure to determine the applications constitutes a poor service. I acknowledge the frustration that delays awaiting a decision can cause. However, the appellant was aware that there were delays in the system from the outset and given the unprecedented circumstances at that time I am unconvinced this in itself amounts to unreasonable behaviour.
9. I note that the proposal had been the subject of pre-application consultation and the Council's concerns, some of which appear to me to be fundamental, were set out to the applicant in an email of 1 August 2019. Whilst I note the applicant sought to amend certain aspects of the scheme following that advice, the elements of the scheme the Council fundamentally objected to, set out in the first three paragraphs of the advice and specifically indicating that development should be directed away from the rear garden area, were not changed. I am not aware of any comments the Council made on the amended

scheme but nevertheless on the basis of the initial response the likely outcome of the planning application seems apparent.

10. For the reasons set out in the decision letter, whilst I have not agreed with all the reasons for refusal, the proposal fails to meet the statutory duty set out in the Planning (Listed Building and Conservation Areas) Act 1990 and is contrary to a number of development plan policies. The Council's objections are therefore well founded. Consequently, the assertion that the Council prevented development which should clearly have been permitted is without foundation.
11. The submission of the Council's statement of case at the appeal stage set out its concerns in full. They included issues relating to the ability for vehicles to manoeuvre satisfactorily within the appeal site without detriment to safety, and whether the proposed dwellings would achieve adequate sunlight, daylight and ventilation. These matters had not been specifically referred to in the pre-application advice or as far as I am aware during the application process and were not referred to in any response to the appellant's emails around the 8-week period or in subsequent correspondence. Drawing these issues to the appellant's attention at the appeal stage amounts to unreasonable behaviour.
12. The appellant sought to address these particular concerns at the appeal stage through the commission of appropriate studies. Had the Council provided an earlier response to the appellant on those matters, those studies could have been provided at the application stage and potentially some of the issues at appeal narrowed. However, had that happened, even though these documents were not ultimately determinative in the appeal, the expense of producing the documents would have remained the same. The appellant responded to other of the Council's concerns succinctly in the appeal statements and I am satisfied that no significant additional expense occurred in that regard.
13. Moreover, in this case there was a fundamental disagreement between the parties on the merits of the proposal. In that regard the matter could have only been resolved at appeal. Therefore, unreasonable behaviour that has led to wasted expense has not been demonstrated.
14. Accordingly, the application for a full award of costs is refused.

S Ashworth

INSPECTOR