

Costs Decision

Site visit made on 6 December 2021

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Costs application in relation to Appeal Ref: APP/T5150/W/21/3277851 36 Park Side, London NW2 6RJ

- 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 Mr Brendan McGowan for a full award of costs against the Council of the London Borough of Brent.
 - 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 single storey side and two storey rear extension to the dwellinghouse.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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.
3. The PPG indicates that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably by delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations.
4. The application was not determined by the Council. The PPG indicates that, if an appeal against non-determination is allowed, the LPA may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination, and better communication with the appellant would have enabled the appeal to be avoided altogether.
5. It is put to me that the Council has acted unreasonably in its application of the so called '1/2 D Rule' as referred to in the Council's Supplementary Planning Document 2: Residential Extensions and Alterations (2018) (SPD2), level of communication and failing to issue a decision which has delayed development that should clearly have been permitted.
6. From the communication before me, the applicant was informed of the Council's concerns in email correspondence between the applicant's agent and the Council in May 2021. However, the Council failed to respond to the agent's final email and a further follow up email on the 16 June 2021. At this point, the prescribed period for the application had passed (4 June 2021) and the applicant subsequently lodged an appeal on the 26 June 2021.

7. There is no substantive evidence that the Council contacted the applicant to update, provide an explanation for the delay or sought an agreement for an additional extension of time. In this regard, the Council behaved unreasonably in delaying the determination of the application after the 4 June 2021, without explanation for the delay.
8. I understand that the Council's failure to determine the application may have been frustrating for the applicant. However, based on the evidence submitted by both parties, it is reasonable to conclude that further communication between the applicant and the Council during that period would not have overcome the matter in dispute. As such, although the Council behaved unreasonably, insofar as delaying a decision on the planning application, I cannot conclude that an appeal would have been avoided if a decision had been made by the Council. Consequently, the Council's substandard communication did not cause wasted expense in the appeal process.
9. As will be seen from my appeal decision I consider that the Council's interpretation of the so called '1/2 D Rule' in its SPD2 was correct. Nonetheless, it will be seen from my appeal decision, that in allowing the appeal I found no harm with respect to the effect of the development on the neighbours living conditions. However, such a conclusion arises from matters of judgement on a subjective issue relating to the proposal's impact, relative to the development plan policies. Consequently, irrespective of the outcome of the appeal, I cannot find that the Council behaved unreasonably relative to the main issue in offering a different view to my own, given the subjectivity of the judgement made.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mr R Walker

INSPECTOR