



Costs Decision

Site visit made on 5 January 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2022

Costs application in relation to Appeal Ref: APP/M2372/W/21/3279173 The Coach House, Oldfield Avenue, Darwen BB2 1QY

- 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 Ms Julie Kershaw for a full award of costs against Blackburn with Darwen Borough 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 a detached garden office/studio, 20m2.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an 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.
3. The PPG states that 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.
4. The applicant's concerns relate to the delays in the processing and failure to determine the planning application; the degree of engagement by the Council and delaying development which she considered should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations.
5. Following the submission of the planning application in the latter part of the pandemic's third lockdown, the Council's delayed initial correspondence with the applicant's representative raised concerns about the effects of the proposed building and the status of a replaced raised platform adjacent to its planned position. As a matter of relevance to a local planning authority, both in terms of its lawfulness and as the specific means of access on which the proposed building would depend, I find it was not unreasonable for the Council to query the status of the decking and seek to establish the facts associated with the proposal and the development site.

6. It is evident from the correspondence provided that the Council's officer had initially discussed these matters directly with the applicant. The subsequent written correspondence of 28 May 2021 reaffirmed the Council's concerns and identified the considered conflicts with the development plan to the applicant's agent. It also explained the reasons for the delays in communicating the Council's concerns and issued an initial apology for that.
7. The correspondence also highlighted that the Council could not foresee a way of mitigating the identified conflicts with the development plan arising from the proposal. Following a subsequent request for clarification and submission of evidence to support the status of the decking by the applicant, the concerns in relation to the proposed building were restated to the applicant's successive representative on 23 June 2021.
8. The rebuttal in support of the proposed building included comments in relation to the effects of existing vegetation lying outside of the site and placed significant weight on a decision made by the Council elsewhere. It also levelled an accusation of bias on the part of the case officer.
9. As I have found, the mitigation offered by the trees to the rear of the site and vegetation within the neighbouring property, would not alleviate the effect of the development on the neighbouring occupiers. Given the Council's stated position, it was not for the Council to prescribe a scale or nature of proposal which might be acceptable. Accordingly, the initial suggestion to withdraw the planning application to enable pre-application discussions, as advocated by the National Planning Policy Framework, was not without merit.
10. The applicant's claim that a development elsewhere established the principle of development on the appeal site was misplaced. On the basis of the information before me, there are clear differences between the proposals and the respective site circumstances. Precedent is rarely an argument that should carry great weight in planning decisions, which should be made on their own merits in the context of the development plan and other material considerations. The accusation of bias is subsequently unsubstantiated.
11. The applicant accepts that there was some discrepancy between the plans submitted with the application. In the circumstances, I find it was not unreasonable for the Council to seek to clarify the detail of the proposal for the avoidance of doubt. Furthermore, for a development on a sloping site a request for site levels was not unwarranted. Any attendant delay in seeking and/or obtaining consistent supporting information is not firm ground to find against the Council. Moreover, there is little evidence presented to demonstrate that this was an intended delaying tactic on the part of the Council.
12. The Council's statement has subsequently limited the scope of contended matters for the purpose of the appeal. It has sufficiently identified the Council's concerns and provided clear and adequate reasoning for why it would have refused planning permission.
13. The reasons for the delays have been explained by the Council and it issued apologies to the applicant on more than one occasion. Further, I find the additional substantive reasons of the effects of the pandemic, increased workloads arising from staff absences and the case officer leaving the Council, provide clear extenuating circumstances for the extended period for consideration of the planning application.

14. Furthermore, although there were clear breaks in communication, there is little before me to suggest that better communication with the applicant would have enabled the appeal to be avoided altogether.

Conclusion

15. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Hitchcock

INSPECTOR