



Costs Decision

Site visit made on 25 January 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Costs application in relation to Appeal Ref: APP/V5570/W/21/3281398 Units A-D and Land to the rear of Units 3-10, Bush Industrial Estate, Station Road, London N19 5UN

- 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 Zenobe Energy for a full award of costs against the London Borough of Islington.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the installation of a container to house electrical equipment and a Distribution Network Operator substation.
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Decision

1. The application for costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) says 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. The PPG further advises 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. Where an appeal against non-determination is allowed, the local planning authority is at risk of an award of costs if the Inspector concludes that there were no substantive reasons to delay the determination, and that better communication with the applicant would have enabled the appeal to be avoided altogether.
3. The application was dated 14 September 2020 and was validated by the Council on 28 October 2020. The original target date for a decision was 8 December 2020. Consultation on the planning application, which took place during November 2020, resulted in over 90 objections being submitted to the Council. Owing to the sensitivity of the site and the level of public opposition, it was decided the application should be considered by the Council's main planning committee.
4. The high level of public response would have taken time for the Council to digest, and although concerns about the wider use of the site prompted the majority of the comments, it was necessary to fully understand the implications of the concerns raised for the appeal scheme. Officers would have also needed time to consider the additional information which the applicant provided in February, which provided a response to representations and a noise report. However, beyond that time, reasons for the delay in making a decision are less

apparent, and it appears from the correspondence provided by the applicant that the Council was slow to respond to requests for progress updates.

5. Keen to secure a local decision, the applicant proposed an extension of time in May 2020. A date of 16 July was agreed, which would have allowed for consideration of the application at the July committee. However, this date was missed, as was the opportunity to present a report to the September committee. A report was finally considered by committee in November 2021, following the applicant's submission of an appeal against non-determination.
6. I appreciate that demand for agenda slots on the main planning committee was high, with the wider challenges of the past year, including social distancing requirements, exacerbating the pressures on committee schedules. However, several opportunities to take a report to planning committee were missed. The Council has not provided convincing reasons for the delay in coming to a decision on what was a fairly minor, albeit controversial, application.
7. After the appeal had been lodged, the planning committee resolved that it would have approved the scheme. Had a timely decision been made, therefore, the need for an appeal, and the costs associated with it, would have been avoided.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 the Council of the London Borough of Islington shall pay to Zenobe Energy, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the London Borough of Islington, 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.

R Morgan

INSPECTOR