



Costs Decision

Site visit made on 22 November 2021

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2022

Costs application in relation to Appeal Ref: APP/U5360/W/21/3274496 Ursulas Convent, 11 Amhurst Park, Hackney, London N16 5DH

- 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 BC Trust Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - 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 change of use of existing Convent (Sui Generis) to girls school (F1) for up to 120 pupils.
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Decision

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

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. A previous application was submitted in August 2020 for proposals identical to the appeal scheme. Unfortunately, this application coincided with a cyber-attack which affected all of London Borough of Hackney's current and ongoing planning applications. At the time of the cyber-attack, which occurred in October 2020, the applicant indicates that the planning application was just a matter of weeks from determination at the beginning of November 2020. Despite numerous emails and phone calls, the applicant indicates that no contact was made by the Council relating to the progress of the application.
4. Towards the end of January 2021, the Council did email the agent that the application needed to be withdrawn due to the cyber-attack and an identical application was required to be submitted. An identical planning application was, therefore, submitted by return on 25 January 2021, which is the appeal proposal. Despite numerous emails and phone calls, the applicant indicates that the Council has again failed to make any contact regarding the progress of the application. The determination deadline has passed without any contact. As a result, the applicant finds the behaviour of the Council to be completely unreasonable and that the appeal against non-determination should have been unnecessary.
5. Under the PPG, costs cannot be claimed for the period during the determination of the application but events during this period can determine whether costs

can be claimed for the appeal process. Specifically, the PPG¹ states costs can only be awarded in relation to unnecessary or wasted expense at the appeal but that behaviour and the actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded (during the appeal process).

6. The Council has indicated a significantly increased workload for officers given that they were dealing with resubmitted applications together with new applications due to the cyber attack. Additional difficulties have related to the continued coronavirus pandemic with remote working and a shortage of staff, with a number of staff leaving in 2021. As a result, it is stated that officers have had to deal with a high number of applications and some have had to go over the expected deadlines. Officers have not had the capacity to update agents and applicants as much as they would normally aim to.
7. Whilst I sympathise with the Council difficulties, the difficulties experienced by the applicant in progressing his proposal have been over a significant period of time. It is significant that the previous application was identical to the appeal proposal, submitted in August 2020, and the appeal for the current appeal application was submitted May 2021 following a Council request to withdraw that initial application. In respect of the appeal, the Council submitted no statement of case and for the reasons indicated, the appeal has been allowed and planning permission granted.
8. Therefore, there is no justification for exceptional circumstances and a development has been prevented/delayed which should clearly be permitted, having regard to the development plan, national policy and other considerations. Such behaviour is unreasonable and has resulted in unnecessary costs for the applicant in pursuing an appeal. In this respect, a full award of costs is justified for work involved in the preparation and submission of the appeal, including statements. In summary, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, 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 Hackney shall pay to BC Trust Ltd, the costs of the appeal proceedings described in the heading of this decision, as described above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathon Parsons

INSPECTOR

¹ Section Appeals paragraph 033 Reference ID: 16-033-20140306