The Planning Inspectorate

Costs Decision

Site visit made on 28 February 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Costs application in relation to Appeal Ref: APP/Z4310/X/21/3288568
38 Liscard Road, Liverpool L15 0HH

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr O McKinley for a full award of costs against Liverpool City 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 a certificate of lawful use or development (LDC) for the proposed change of use from C3 (dwellinghouses) to C4 small house in multiple occupation (HMO).

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 appellant submits that the Council has been unreasonable and has caused them to incur significant costs in preparing and submitting the appeal against the non-determination of the LDC application. It is argued the appeal would not have been necessary if the Council had carried out its statutory functions correctly.

4. The PPG (para 047) advises that a local planning authority is at risk of an award of costs through a lack of cooperation with the other party, or a delay in providing information or other failure to adhere to deadlines. The guidance continues (para 048) that – "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. 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 State 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". The PPG advises that the Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances (para 046).

5. The appellant submitted the application with relevant supporting plans and information. There is no evidence that the application was incomplete or lacking in some way or that the appellant caused or added to the failure to determine the application.

6. The Council explains when the application was submitted, the planning team was in the process of switching to a new IT system. This led to delays in retrieving information from the planning portal and processing applications, which was compounded by technical difficulties. I understand the team were struggling to cope with new working practices and the effects of the COVID-19 pandemic. It is acknowledged that the appellant was not properly informed of progress. However, the Council contends that the failure to determine the application was due to factors outside of its control.

7. I disagree that the installation of a new IT system was outside of the Council's control. The Council took a decision to upgrade systems and introduce new procedures. The project was entirely within its control. However, the effects of the pandemic could not have predicted and planned for in the same way as the replacement IT system. I accept that its effects could be considered beyond the control of the Council. This amounts to extenuating circumstances which impacted on the Council's ability to process applications properly, and in a timely manner.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore

Inspector