



Costs Decision

Site visit made on 26 October 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Costs application in relation to Appeal Ref: APP/T5150/W/20/3266062 154A-B-C Harlesden Road & 9A-B Crossway, London NW10 3RE

- 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 Ebele Muorah 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 a development described as:
"Replacement of 3 porches into 2 semi enclosed porches and one new fully enclosed porch with new entrance door, removal of boundary railings, erection of 1.8m fence panel with gates to the boundary, replacement of first floor hallway windows with French doors and placement of guard rail to the porch rooftop, provision for cycle storage and electrical charging station all works to 154 A-C and erection of single storey annex building incidental to and to the rear of 9 Crossway, NW10".
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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 process¹.
3. Paragraph 049 of the PPG gives examples of unreasonable behaviour by local planning authorities². These include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failing to produce evidence to substantiate each reason for refusal on appeal;
 - making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

The application for an award of costs refers to each of these examples, which I shall address in turn.

4. The overall thrust of the applicant's claim is that the Council behaved unreasonably in failing to determine the planning application, and that this "put the applicant to task to submit as a full planning application despite most of the development being permitted development".
5. The planning application form was dated 23 October 2020. The applicant has provided me with a copy of an e-mail, timed at 2.12pm on 1 December 2020, in which the Council asked for agreement to extend the deadline for determining the application from 28 December 2020 to 11 January 2021, to account for the case officer being on leave over the Christmas period. From what I can see on the same page, the applicant appears to have replied at 7.32pm on the same day, although I have not been provided with the content of that reply. However, as the appeal form was electronically signed and dated at 6.00pm on 27 December 2020, it appears self-evident that the applicant did not agree to an extension of time.
6. I note the advice in Paragraph 048 of the PPG 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 that "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 Council's reasons for not reaching a decision on the original planning application are briefly set out in its e-mail of 1 December 2021, while its costs response also indicates that there was likely to be further delay as a result of the high number of objections received, and the subsequent need for the application to go to committee for determination. There is no evidence before me of any steps taken between the main parties to resolve the disputed planning matters in this case, but as the appeal was lodged at more or less the earliest possible opportunity, it seems unlikely that the appeal would have been avoided.
7. Although the applicant insists that much of the scheme should have been permitted development, in its response to the costs claim the Council pointed out that in the original planning permission for the development including the appeal sites, permitted development rights for porches were specifically removed³. It is also far from clear to me that the proposed outbuilding would fall within the restrictive parameters to qualify as permitted development under Schedule 2, Part 1, Class E of the General Permitted Development Order⁴. In any case, the planning application had already been submitted; the applicant's argument that the Council's failure to determine it somehow unreasonably forced them to submit a full planning application therefore does not stand up to the slightest scrutiny.

³ LPA Ref: 00/2840, condition 7

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

8. It is also relevant to note here that, for the reasons which are set out in my main decision, I found that the proposal conflicted with the development plan and consequently dismissed the appeal. It therefore follows that I cannot find that the Council prevented or delayed development which should clearly have been permitted.
9. The Council's appeal statement addressed the reasons for which it would have refused the planning application had it reached a decision. While its appeal statement was concise, it substantiated each putative reason for refusal in a way which, it will again be clear from my main decision, I found persuasive. I therefore cannot find either that the Council failed to produce evidence to substantiate each reason for refusal on appeal, or that it made vague, generalised or inaccurate assertions about the proposal's impact.
10. Furthermore, none of the evidence before me indicates that the Council did not review its case promptly as part of sensible ongoing case management. Although the applicant clearly does not agree with the Council's opinion of the proposed development, in the light of my main decision I cannot find that the Council has behaved unreasonably in maintaining its position in respect of the harm they considered would arise from the scheme.
11. The applicant also suggested that the Council received "multiple out of time comments". While the way in which this is alleged to be unreasonable towards the applicant is not explained, Paragraph 034 of the PPG is clear that "local planning authorities may, at their discretion, take into account comments that are made after the closing date (but have no obligation to do so)"⁵. Finally, the applicant has stated that the impact of the Covid-19 pandemic meant that the proposed balconies would have enabled residents to have access to outdoor areas during various lockdowns, and that by not granting planning permission for them the Council has disadvantaged the applicant by making the properties "more undesirable for letting purposes". However, for reasons which are again set out in my main decision, I found the proposed balconies to be not acceptable in planning terms. Furthermore, any deficiency in outdoor space which might have afflicted tenants during Covid-19 lockdowns seems to me to be far more likely to stem from the way in which the appeal site had already been reconfigured than from any action, or lack of action, on the part of the Council relating to the planning application or subsequent appeal. I therefore find no unreasonable behaviour in either of these respects.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

⁵ Reference ID: 15-034-20190723