
Costs Decision

Site visit made on 28 February 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Costs application in relation to Appeal Ref: APP/X1355/W/21/3289286 17 High Hamsterley Road, Hamsterley Mill NE39 1HD

- 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 Miss Nicola Garrington for a full award of costs against Durham County 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 the erection of dwelling.
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Decision

1. The application is refused.

Reasons

2. Planning Practice Guidance (the Guidance) advises that parties in planning appeals normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Irrespective of the outcome of an appeal, costs may only 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 Guidance is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a local planning authority's handling of the planning application prior to an appeal may lead to an award of costs.
4. This appeal relates to the Council's failure to determine the application within the prescribed period. The Guidance states that if it is clear to a local planning authority that it will fail to determine an application within time limits it should give the applicant a proper explanation.
5. The Council did advise the applicant of a delay in the determination of the application albeit not, it seems, until a considerable time after its submission and subsequent validation. No agreement to an extension of time was sought at this point and the applicant had to make further contact a month later to enquire as to progress. I have noted the parties' agreement that there was a need to re-post the site notice following the apparent removal of the original site notice. I accept that this would inevitably have altered the application's timeline. Nevertheless, the Council's later update to the appellant¹ was some two months after the re-posted site notice's date².

¹ Agreed to have been on 17 November 2021

² Dated 15 September 2021

6. I also accept that workload and staffing pressures are likely to have been compounded by pandemic-induced factors. Nevertheless, it should have been evident to the Council earlier than was communicated to the applicant that it would not be possible to determine the application within the prescribed timescales.
7. Subsequent correspondence was responded to in a relatively timely manner but by this time a considerable period of time had elapsed since the submission of the planning application. The applicant was therefore intitled to exercise her right under section 78(2)(a) of the Act³ to appeal against the Council's failure to determine the application. The relative dates of the application for an award of costs and the appeal submission do not indicate pre-determination or unreasonable behaviour by the appellant, as suggested by the Council. Rather, it is indicative of the appellant's frustration with the Council's poor and reactive (rather than proactive) communication and the overall delays in the determination of the application.
8. The Council's appeal submission does not explain the reasons for not reaching a decision on the application as suggested by the Guidance, but the Council instead relies upon its costs rebuttal to set out its reasoning in this respect. It has, however, clearly set out within its Statement of Case the reasoning why, had it determined the application, it would have resolved to refuse the application. Nevertheless, I find that the Council did not act in a communicative, timely or pro-active manner as advised by the Guidance⁴, instead reacting to, rather than pre-empting, the applicant's prompts to provide belated updates.
9. With regard to the stated ground for the application for an award of costs against the Council, I find that the Council's handling of the planning application amounts to unreasonable behaviour. However, for a costs application to be successful unreasonable behaviour must also result in unnecessary costs being incurred by the successful party. The Guidance also states that if an appeal against a failure to determine is allowed, the local planning authority may be at risk of costs if it is concluded that there were no substantive reasons to justify delaying the determination and that better communication with the applicant would have avoided the appeal altogether.
10. The Council has, however, clearly and in some detail set out its reasoning behind the putative reason for refusal, in response to which the appellant has had the opportunity to respond. I note too, that the appellant's Planning Statement, submitted to accompany the current planning application, considered the proposal in terms of matters of design and the proposal's effect on character and appearance⁵. Whilst I appreciate that this was not a matter expressly considered by the previous Inspector in her decision on the earlier scheme, the appellant nevertheless felt it worthy of addressing at the outset of the current application. This matter became the focus of the Council's putative 'refusal' reason and is the main issue to which my decision to the planning merits relates.
11. The matter of consistency is important in the planning process and like cases should be decided in a like manner. A previous appeal decision is capable of

³ Town and Country Planning Act 1990 (as amended)

⁴ Paragraph: 048 Reference ID: 16-048-20140306

⁵ Section 6.8 'Design'

being a material consideration where that decision is sufficiently closely related to issues that regard should be had to it. It is therefore also important to note that the Council did not determine the application from which this appeal derives. In accordance with section 79 of the Act, on appeal under section 78 of the Act the application may be dealt with as if made to the Secretary of State in the first instance.

12. I am satisfied that the previous appeal decision has been considered by the Council in setting out the Statement of Case and putative refusal reason. The Council's approach to the current proposal and that of the previous scheme does not in my judgement however amount to an inconsistency of approach. My decision on the planning appeal sets out my reasoning as to why I agree with the conclusion reached by the Council. Those reasons also set out why I consider that the appeal could not have been avoided and that the Council did not therefore delay an otherwise acceptable form of development. There was not, as a consequence, unnecessary or wasted expense as the Council's case was well-founded and justified.
13. As unnecessary or wasted expense has not arisen, the application cannot succeed even though I find that the Council's approach to the handling of the application itself amounted to unreasonable behaviour. For the reasons set out therefore, the application for an award of costs against the Council fails.

G Robbie

INSPECTOR