
Costs Decision

Site visit made on 7 March 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2022

Costs application in relation to Appeal Ref: APP/R5510/W/21/3285383 38 Hazeldene Gardens, Uxbridge UB10 9DJ

- 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 Mr Bharadia for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of the Council to grant planning permission for a 2 storey 2bed dwelling.
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Decision

1. The application is allowed and full costs are awarded.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The costs application is made on the grounds of delays to the determination of the application.
3. In this instance the Council failed to give notice within the prescribed period of a decision on an application for planning permission. The Council's handling of a planning application prior to the appeal can be taken into account in considering an award of costs.
4. The PPG¹ advises 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.
5. The guidance goes on to state 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.
6. The evidence indicates that the application was submitted on 1 March 2021 and acknowledged by the Council on 5 March 2021. It remained undetermined

¹ Paragraph: 048 Reference ID: 16-048-20140306

when the appeal was submitted some considerable time later on 21 October 2021.

7. Within their cost rebuttal, the Council accept that there was a delay in determining the application. There is however no explanation as to why they were not able to determine the application within a reasonable time period. Further, as detailed within the putative reason for refusal included within their statement of case the concerns of the Council are limited to one narrow issue.
8. In relation to decision-making the Framework² requires that local planning authorities should approach decisions on proposed development in a positive and creative way. They are also required to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area.
9. The appellant seems to have been under the impression that there were no outstanding issues with their proposal and that they were waiting a date for the proposal to be put before the planning committee. Had there been better communication with the applicant during the course of the appeal, it is conceivable that the matter of disagreement could have been resolved through dialogue which would have enabled the appeal to be avoided altogether.
10. The Council has therefore behaved unreasonably and this unreasonable behaviour has directly caused the appellant to incur unnecessary or wasted expense through the preparation and submission of the appeal.

Conclusion

11. Local Planning Authorities are at risk of an award of costs in relation to appeals against non-determination. In line with the PPG, costs can be awarded in such circumstances if the appeal is allowed and there are no substantive reasons to justify delaying the determination of the application and better communication with the applicant would have enabled the appeal to be avoided altogether.
12. I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A full award of costs is subsequently justified.

Costs Order

13. 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 Hillingdon shall pay to Mr Bharadia the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

T J Burnham

INSPECTOR

² National Planning Policy Framework 2021.