



Costs Decision

Site visit made on 17 May 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Costs application in relation to Appeal Ref: APP/Z5630/W/21/3274582 Land to the rear of, 16 Cambridge Road, Kingston Upon Thames KT1 3JY

- 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 Karl Schooling for a full award of costs against the Council of the Royal Borough of Kingston upon Thames.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of disused building and erection of a single-storey (1b1p) dwelling house.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG 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 PPG 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. Furthermore, 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 planning application¹ subject to the appeal was registered by the Council on 3 February 2021 with a decision date by 22 March 2021. Following a failure to determine the scheme by that date, the applicant sought a progress update on 23 March 2021, yet the Council failed to reply. Similarly, it did not respond to the applicant's notice of intention to appeal on 26th March 2021. The

¹ 21/00064/FUL

applicant was therefore entitled to exercise his right under section 78(2)(a) of the Act² to appeal against the Council's failure to determine the application.

6. In the material before me for the purposes of the appeal and costs application, there are no details to indicate that the Council have reviewed their case promptly as part of sensible ongoing case management. It has failed to submit a statement of case in accordance with the appeal timetable having indicated one would be provided in their questionnaire, while my request for a list of conditions to consider in the event I were to allow the appeal was unsuccessful. Additionally, there has been no rebuttal to this Costs application despite the Council being given the opportunity to respond. Against this background and lack of information, the appellant has had to pre-empt the Council's case. This may have been a wasted exercise, at least in part, had the Council been more forthcoming in clarifying its position.
7. I note that the Council requested that the appellant withdraw the appeal in order to progress the planning application. However, despite that request, it should not preclude the Council's reasonable participation in the appeal process and the submission of an assessment of the case and/or a putative recommendation were it determining the case. I find that the Council did not act in a communicative, timely or pro-active manner as advised by the PPG³.
8. With regard to the stated grounds 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.
9. The PPG makes it clear that a local planning authority is at risk of an award of costs if it makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
10. There is some uncertainty from the submitted information whether the Council requires the developer to enter into a unilateral undertaking (UU) to prevent occupiers of the property obtaining a parking permit. The previous application⁴ at the site was refused, although on the matter of parking the officer's report clearly indicates that a UU in the terms described is not required.
11. Nevertheless, the appellant refers to a communication with the Council in July 2021 when there was a request for a UU to expedite the planning application. There is no explanation for this change of position, and it has therefore led the appellant to prepare and submit a UU with its appeal documents. This would have incurred additional expense on the appellant's part that may not have been necessary had the Council been clearer on whether the UU was required in the first instance. There has subsequently been no communication from the Council's planning advisers whether the UU is acceptable or not. Accordingly, the Council has been vague and unhelpful on this matter and has led to an unnecessary costs burden placed on the appellant.

² Town and Country Planning Act 1990 (as amended)

³ Paragraph: 048 Reference ID: 16-048-20140306

⁴ 20/00111/FUL

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is 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 Royal Borough of Kingston Upon Thames shall pay Mr Karl Schooling, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing its appeal documents and evidence.
14. The applicant is now invited to submit to the Council of the Royal Borough of Kingston Upon Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, such costs shall be assessed in the Senior Courts Costs Office.

RE Jones

INSPECTOR