



Costs Decision

Site visit made on 16 August 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th September 2022

Costs application in relation to Appeal Ref: APP/M2840/W/21/3288068 16 - 18a Horsemarket, Kettering, NN16 0DQ

- 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 Odunaiya for a full award of costs against North Northamptonshire 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 mixed-use development consisting of 28 no. flats and ground floor commercial unit.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council, including behaviour during the application process.
3. Against those examples, the applicant claims that the Council acted unreasonably by failing to communicate and engage with them and their submissions during the application process. This was despite the application being a resubmission of ones previously dealt with by the Council and the Planning Inspectorate.
4. Given the lengthy history, it seems that the development proposal was capable of being made acceptable to the Council, subject to the resolution of matters around the unilateral undertaking (UU). However, given the timings of events (including the dates of the previous appeal decision¹, the submission of the appeal application, the deadline for determination of the appeal application, the signing of the UU and the submission of the appeal) I do not find it is wholly clear that this delay was entirely the fault of the Council.
5. The criteria for an application for an award of costs has two limbs. Firstly, a party must behave unreasonably. It appears that the Council did not give the applicant a proper explanation at the time as to why they would fail to determine the application within the time limits. The PPG sets out that this may be unreasonable behaviour if any subsequent appeal is allowed. However, it

¹ Appeal reference 3266021, dated 3 August 2021

also says that any such costs decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

6. As I have found in my main decision, there were a number of specific failings in the UU set out in the previous appeal decision. One of these (the lack of a trigger for the implementation of the UU) was repeated in the version submitted with this appeal, so I do not consider that permission for the development would necessarily have been granted had the application been determined within the relevant period in any event, nor do I find that the processing of the appeal application prevented or delayed development which should clearly be permitted.
7. As such I do not find that the Council behaved unreasonably during the application process. I also do not find any unreasonable behaviour on the part of the Council during the appeal process.
8. The second limb of the test for an award of costs is that that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process. However, as I have not found that the Council behaved unreasonably, it is not necessary to consider this part of the test.

Conclusion

9. I therefore find that the Council has not demonstrated behaviour which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense.
10. The application for a full award of costs should therefore be refused.

S Dean

INSPECTOR