



Costs Decision

Inquiry Held on 28 September 2022

Accompanied site visit made on 30 September 2022

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Costs application in relation to Appeal Ref: APP/T0355/W/22/3295154 Brayfield Stables, Windsor Road, Water Oakley, Windsor SL4 5UJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Wayne Owen for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of hardstanding and dayrooms ancillary to that use without complying with conditions attached to planning permission Ref: APP/T0355/W/15/3131046, dated 11 November 2016 .
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Decision

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

The submissions for Mr Wayne Owen

2. The application was made principally in writing, with later oral comments, and seeks full costs associated with the appeal or, in the alternative, partial costs.

The response by the Royal Borough of Windsor and Maidenhead

3. The Council responded to the application in writing.

Reasons

4. I do not need to rehearse the application and response here, but deal only with the reasons for my decision. The application is straightforward in its terms, and deals with the matters set out below.
5. First, there is agreement that the reference in the application to a previous and undetermined planning application made in 2019 is not capable of contributing to this application for costs. I agree with that position. The 2019 application is background to the present case and could, as it was not determined, have prompted an appeal at that stage. Such an appeal was not made.
6. Secondly, it is clear that the Council's handling of the current appeal was less than satisfactory. I accept that it had doubts about the submission of the application pursuant to S73 of the Act (rather than S73A) and that it had resource difficulties which made dealing with the application challenging. But it is apparent that little attempt was made to discuss the matter with the

Appellant, and there was no material dialogue or information forthcoming in relation to the reasons for delay.

7. However, it is also clear that the Council's position, as expressed at the inquiry, was in any case not supportive of the development. I accept that no amount of dialogue would have resolved the differences between the parties. This is not a case where dialogue would have led the Council to allow the application. So an appeal was inevitable and unavoidable. So whilst the Council's behaviour in not engaging with the Appellant during the course of the application period was unreasonable, that has not led to wasted expense at appeal as such expense would have been necessary in any case. The Council presented a respectable case at the appeal to back up its position on the merits of the development.
8. Thirdly, I accept the fact that the updated GTAA was brought to the attention of the Appellant at a late stage. But this was at the time that the research for the update was published, and not the date of the research itself. The Appellant was furnished with the information at the appropriate time and the Council did not act unreasonably in this respect.
9. Fourthly, the Council has gone beyond its putative reason for refusal in addressing the matter of harm to the character and appearance of the area. Although referenced in the previous appeal decisions it is incumbent on the Council to express its case fully and precisely at an early stage. This it did not do until later in proceedings. That is unreasonable. If the Council wished to rely on previous findings from earlier appeals then it should have made that clear at the beginning of the proceedings. The Appellant did address the matter of character and appearance and I accept that this led to a small amount of extra work and consequential expense.

Costs Order

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.
11. 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 Royal Borough of Windsor and Maidenhead Council shall pay to Mr Wayne Owen the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the issue of character and appearance after the first submission of proofs of evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Royal Borough of Windsor and Maidenhead Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Philip Major

INSPECTOR