The Planning Inspectorate

Costs Decision

Site visit made on 20 September 2022

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Costs application in relation to Appeal Ref: APP/Y1110/W/22/3297221
The Headland, Woodwater Lane, Exeter EX2 5AW

- 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 Bradley Cannings for a full award of costs against Exeter City 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 extension to and conversion of existing garage to ancillary, residential annexe.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process. It is also clarified in the PPG that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, though behaviour and actions at the time of the planning application can be taken into account in the consideration of whether costs should be awarded or not.

3. The applicant has made an application for a full award of costs and highlights both substantive and procedural issues which have resulted in the application for costs. In terms of procedural matters, it is alleged that the Council have failed to work pro-actively and that the application was being processed for over 26 weeks without being decided, despite the Council's indication that it was minded to refuse permission, forcing the submission of this appeal against the failure to determine the application. In terms of substantive matters, the appellant alleges that the Council made vague, generalised and inaccurate assertions about the proposal's impact and has failed to consider the imposition of planning conditions which would allow the development to proceed in accordance with the development plan.

4. I have also noted the applicant's comments in relation to the planning history of the site, however I do not find any delays in relation to previous applications to be of relevance to this particular application for costs.

5. The Council has responded setting out their case and this includes that the Case Officer unfortunately had to take time off work due to health problems

resulting in a severe shortage of staff and delay and the applicant was mistakenly advised that the planning application was invalid. However, the Council state that they had maintained a dialogue and sought to update the applicant throughout.

6. Whilst the Council failed to determine the application within the prescribed period, I have been supplied with an Officer report as part of the appeal process which indicates that the Council would have refused permission on matters relating to the proposal being a self-contained unit and the harm associated with such a development. This was not the basis of the application which proposed an ancillary residential annexe use and I have found in my decision that a planning condition, as suggested at the time of the application by the applicant, could have reasonably been imposed.

7. However, in both correspondence with the applicant of the 8th March 2022, and the Officer report the Council does provide substantive reasoning as to why they would consider the proposal tantamount to a new self-contained dwelling. Whilst this may be so, the Council are required to consider an application on the merits of what is being applied for, which is not the case here. If the proposal were to be used as a self-contained residential unit, the Council would have the option to enforce against any unauthorised use in the future.

8. Copies of the correspondence that I have been supplied with show that the applicant attempted to clarify to the Council the development applied for, and invited the Council to impose a planning condition restricting the annexe use as accommodation to the main house. I find that there could have been no doubt as to the purpose of the planning application.

9. I am of the view that that the delays with the processing of the appeal application are unfortunate but the Council's continued communication with the applicant and the circumstances in relation to staffing brings me to conclude that the delay in processing the application does not result in unreasonable behaviour by the Council. However, I find that the proposal was not considered on the planning merits of the development that was applied for, and therefore the appeal could have been avoided.

10. As such, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

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 Exeter City Council shall pay to Mr Bradley Cannings the costs of the appeal proceedings described in the heading of this decision.

12. The applicants are now invited to submit to Exeter City 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Harrington

INSPECTOR