Costs Decision

Site visit made on 12 October 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 October 2022

Costs application in relation to Appeal Ref: APP/Z2260/W/21/3283893
Chilton Tavern, 187 Pegwell Road, Ramsgate, CT11 0LY

- 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 LVN1 Ltd for a full award of costs against Thanet District 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 planning permission for erection of a terrace of 5 x 3 bed dwellings with associated parking, cycle and refuse store and landscaping, following demolition of existing buildings.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. There is advice about when a local planning authority's handling of an application might lead to an award of costs at paragraph 048 of the PPG with specific reference to non-determination cases. The application was submitted on 25 April 2021. The statutory period for deciding it was extended, with agreement, from 29 June to 30 July. After that time, the Council provided little response to repeated emails or telephone messages seeking an update on progress and any indication of the Council's concerns. Given the significant delay and lack of progress, the applicant felt obliged to submit an appeal dated 29 September 2021.

4. The Council accepts that there was a delay in deciding the application due to heavy workloads and the 'knock on' impacts on the service of the pandemic. Whilst not seeking to downplay any resourcing issues faced by the local planning authority, no detail is given about this. Furthermore, bearing in mind that lockdown restrictions first came into force in March 2020, the Council has had considerable time to adjust to revised working arrangements. After 30 July 2021 the only contact was a message from the case officer that the Conservation Officer was considering the further commentary on heritage matters but that this was held up due to annual leave and workload. Further chasing elicited no feedback. This was unsatisfactory.

5. There may well have been fundamental differences between the parties concerning, most likely, the loss of a community facility and a building

considered by the Council to be a non-designated heritage asset. But there is no evidence that this was made clear to the applicant at the time. It would also have been helpful for the Council's other reservations to have been expressed as these only came to light in its appeal statement.

6. One of the aims of the costs regime is to encourage good practice in terms of timeliness. There was a clear failure in this respect given the length of time the application remained undecided. Moreover, although there may have been mitigating factors, it was unreasonable for the Council to give no feedback about the progress of the application or of its concerns. These could have been brief. There is no clear evidence that internal issues meant that this would have been impossible.

7. Nevertheless, the Council's appeal statement comprehensively explains why permission would not have been granted had the application been determined within the relevant period. Furthermore, even if the application had been decided before the appeal was made, it is evident that the outcome would have been the same. Therefore had the application been decided more quickly and had there been better communication with the applicant, this would not have enabled the appeal to have been avoided altogether.

8. Therefore, whilst there has been unreasonable behaviour, this has not resulted in unnecessary or wasted expense and a costs award is not warranted.

David Smith

INSPECTOR