



Costs Decision

Site visit made on 25 October 2022

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2022

Costs application in relation to Appeal Ref: APP/X1165/W/22/3299531 Lincombe Keep, Lincombe Drive, Torquay TQ1 2HQ

- 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 and Mrs. Marks for a full award of costs against Torbay 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 approval required under Article 3, Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to enlarge an existing dwelling through 1no. additional storey.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. The application is based on the contention that the Council failed to work pro-actively; made vague, generalised, and inaccurate assertions about the proposal's impact; and pre-determined the proposal without considering the submitted documents and evidence. Two examples of unreasonable behaviour described in the PPG have also been highlighted by the applicants, relating to the delay of development that should have been permitted, and the prompt review of a case following the lodging of an appeal.
4. The applicants' evidence regarding the lack of pro-active working relates to the way in which planning application reference P/2021/1084 was handled. However, this is not relevant to my decision on this costs application, which relates to an appeal against the failure to determine a subsequent planning application.
5. The PPG says that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation, and that in an appeal against non-determination, it should explain its reasons for not reaching a decision. The applicant sought guidance from the Council about progress on the application on 9 May 2022, 13 days before the statutory period expired. The Council explained in its email of

11 May 2022 that, although the Case Officer had not yet had the opportunity to fully scrutinise the proposal, it was hoped that a decision would be reached the following week. This suggested that a decision was likely within the statutory timescale, or shortly afterwards. In the event, the appeal was lodged on 23 May 2022, the day after the expiry of the statutory period. Whilst it is regrettable that the statutory timescale was not met, the evidence indicates that a decision was imminent. The short delay would not have amounted to unreasonable behaviour, particularly as the likely timescale had been communicated.

6. It was the exchange of correspondence regarding this matter that led to the applicants' contention that the Council had pre-judged the application, without a full consideration of the case. However, I find that the Council's e-mail of 11 May 2022 was merely intended as open and helpful advice to the applicants, on an informal basis, that the likely outcome was a refusal. This advice was subject to the caveat that the proposal had not been properly examined, suggesting that there was scope for the position to change. A series of messages followed, in which the Council made it abundantly clear that the application had not been pre-determined. Ultimately, the Council did not determine the application, as the appeal was lodged before it was able to make its decision. Nevertheless, the evidence does not indicate to me that the Council was unreasonably approaching its decision with a closed mind.
7. The PPG advises that a local planning authority will be at risk of an award of costs for not reviewing their case promptly, following the lodging of an appeal. The Council undertook this review, and, in its appeal statement, it accepted that, providing the floor to ceiling height of the existing garage as shown on the drawing submitted with the application was accurate, then the requirements of A.1(h)(ii) would be met. This resulted in a narrowing of the difference between the parties. However, the statement also sets out a cogent argument as to why the application would still have been refused, due to the impact on the amenity of The Spinney. This includes an examination of the additional evidence. There was, therefore, no failure by the Council to review its case in the light of the appeal.
8. The PPG advises that Councils are at risk of an award of costs if they make vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The applicants' allegation that the Council is guilty of doing this is not supported by any evidence or examples. Consequently, I cannot conclude that the Council has acted unreasonably in this respect.
9. The PPG advises that Councils will be at risk of an award of costs against them if they delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations. Whilst I concluded that the proposal would not harm the amenity of the adjacent property, there was a degree of subjective judgement involved in reaching this decision. It was not unreasonable for the Council to have arrived at an alternative conclusion. Indeed, the Council's position was consistent with its determination of the previous application, which would have had a very similar impact on the amenity of the neighbouring property. Its case was clearly set out in its appeal statement, so, whilst I found the appellants' evidence to be more compelling, I do not find that the Council acted unreasonably in defending the appeal.

Conclusion

10. For the above reasons, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR