
Costs Decision

Site visit made on 7 November 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Costs application in relation to Appeal Ref: APP/U1430/W/21/3286658 St Giles, High Street, Burwash, East Sussex TN19 7HT

- 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 Mrs Josephine O'Donnell for a full award of costs against Rother District Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for a detached single storey annex building providing accommodation ancillary to an existing dwelling house.
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Decision

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

Reasons

2. 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. In essence, the costs application is that it was unreasonable for the Council to fail to give notice within the prescribed period, or a further agreed period, of a decision on the applicant's planning application. There was insufficient communication with the applicant and a consequential lack of confidence in any decision that the Council might make. This prevented the applicant from building the annex and caused her to lodge an appeal on grounds of non-determination incurring costs related to the appeal.
4. The Council was given the opportunity to comment on the costs application. I have taken comments received into account in my decision.
5. PPG states that costs applications may relate to events before the appeal was brought, including behaviour and actions at the time of a planning application. However, costs unrelated to the appeal are ineligible and cannot be claimed for the period during the determination of the planning application. Nor do such costs extend to compensation for indirect losses, such as those which may result from alleged avoidable delay in obtaining planning permission.
6. There is no reasonable expectation that planning permission will be granted by the Council, nor is the timing of the Council's decision certain. It is not unlawful for a Council to determine a planning application after the statutory time limit. That said, I would not ordinarily expect that 'due consideration' of an application of this type would require such a time frame as in this case.

7. However, the application was submitted at a time when the Council's planning service was grappling with an unhappy coincidence of events. This included a shortage of experienced staff and difficulties in recruiting staff or employing external consultants necessitating changes to case officers mid-way through assessment and determination of applications. There was also a high volume and backlog of applications to be validated and the pre-application advice service had been suspended. The Covid-19 pandemic exerted an unwelcome influence on these matters but the Council had commenced a review of its planning services and prioritised workloads relative to available resources.
8. It is, therefore, unsurprising that there was significant unexpected delay in validating and making decisions on some applications, including corresponding with applicants during the application process. The Council had communicated these operational difficulties to the applicant from the outset and during its consideration of the application.
9. I appreciate that this would have also been frustrating for the applicant and I acknowledge that she agreed an initial extension of time but the need for, and timing of, her application was simply unfortunate. There is no evidence that the Council ignored these issues or did not deal with the applicant's application in anything other than a professional manner, with best effort and endeavour given these exceptionally challenging circumstances. I am unable to comment on any technical reason why emails may have been automatically 'blocked' by the Council's IT systems, but clearly emails sent to the wrong email address is not the Council's fault.
10. The Council has explained its objections to the proposed annex. There is no evidence that it would have made a decision other than to refuse planning permission. It has substantiated these objections in its appeal statement, including reference to local and national planning policy and matters of acknowledged planning interest. The applicant disagrees with the Council's objections but that is largely a difference of planning judgement that I have reconciled in my appeal Decision. Moreover, it will be evident that the Council did not prevent or delay development which should clearly have been permitted.
11. The applicant could have waited for the Council to make a decision and if planning permission had been refused pursue a fresh application with the benefit of a planning officer report, reasons for refusal and perhaps by then resumption of pre-application advice. Instead, the applicant decided to pursue the matter through the appeal process, including the time incurred and other collateral consequences. The appellant is entitled to do so, but PPG sets out that parties in planning appeals normally meet their own expenses.

Conclusion

12. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in PPG, has not been demonstrated. A full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR