
Costs Decision

Site visit made on 6 December 2022

by Paul Thompson DipTRP MAUD MRTPI

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

Decision date: 19 December 2022

Costs application in relation to Appeal Ref: APP/M2840/W/22/3291901 25 Montagu Street, Kettering NN16 8XG

- 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 Neil Briggs for a full award of costs against North Northamptonshire 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 creation of 5 additional residential units, 10 units previously approved KET2017/0237.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises 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 for a full award of costs is on the basis the local planning authority (LPA) failed to determine the planning application within the statutory timescale and the application remained undetermined for several months beyond this without explanation. The applicant suggests this left them with no alternative other than to appeal against non-determination.
4. It is also claimed that the associated delay has resulted in excessive running costs in relation to the building and the development project, but such matters are not linked to the appeal process.
5. The PPG indicates that an LPA's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. It states that if the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay and where this leads to an appeal against non-determination, they should also explain why permission would not have been granted had the application been determined within the relevant period.
6. The application was submitted to the LPA on 19 March 2021, made valid from 6 July 2021, following receipt of the planning fee, and the statutory deadline was 5 October 2021. In his Final Comments on the planning appeal, the applicant suggested emails and telephone calls were sent and made to the LPA's case officer on his behalf in mid-August and mid-October 2021 and he sought to make direct contact via email in late November 2021. All of which

sought clarification on progress and the reason no decision or communication was made. It is claimed that the LPA's Development Manager responded on 1 December 2021 to confirm the allocated case officer was unwell. I have not been provided with copies of any of the above and the LPA's statement suggests it is not aware of any other correspondence from the applicant or his representatives.

7. Nevertheless, it is clear that the LPA only made direct contact in relation to the merits of the application on 15 December 2021, after a new case officer was allocated. At no time did it make any offer of a timescale for the determination of the planning application during or after the statutory deadline or offer any advice in relation to the development until that point. It is only in connection with this costs application that the LPA suggested it was experiencing delays in its decision-making at the time due to increased demand for planning services.
8. The failure of the LPA to determine the application is a matter of great concern, which has fallen well short of nationally prescribed expectations. The LPA set out its position on 15 December 2021, which was provided by an officer with knowledge of the appeal building and offered to discuss options for the building, including grant funding. Had the LPA made its position clearer to the applicant at an earlier stage he may have been able to submit his appeal earlier or make other alternative arrangements. It should, perhaps, have followed up its communication with further dialogue, but there is no evidence to suggest the applicant also sought to liaise with the LPA beyond this point and made the appeal.
9. The period of unexplained delay is unacceptable, and I consider this to amount to unreasonable behaviour by the LPA during the determination of the application. Conversely, during the appeal process, it provided a timely and comprehensive explanation as to why it considered the proposed development to be unacceptable and thereby indicated why it would have refused planning permission. I am therefore satisfied that the LPA fully cooperated, in a timely manner, throughout the appeal process.
10. Turning to the matter of unnecessary or wasted expense. The appellant submitted a short Statement of Case and provided final comments in response to the LPA's statement. However, these are generally straightforward and included a short rebuttal of the LPA's position. It appears to me that, in reality, there has been so little extra work, as a result of the appeal, that it can be regarded as 'de minimis'. In fact, the applicant quickly and succinctly responded to the LPA's case without wasting expenditure.
11. As a result, although I find that the LPA acted unreasonably in its handling of the planning application, it has not caused unnecessary or wasted expense. Therefore, an award of costs is not justified.

Paul Thompson

INSPECTOR