



Costs Decision

Site visit made on 6 September 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Costs application in relation to Appeal Ref: APP/N4205/W/22/3297262 Land off Cox Green Road, Egerton, Bolton BL7 9HA

- 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 & Mrs Gregory for a full award of costs against Bolton Metropolitan Borough 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 the erection of four dwellings.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. 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. The application was not determined by the Council. The PPG stipulates that, if it is clear the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation. Additionally, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit.
4. A further example of unreasonable behaviour within the PPG is where a Council has refused to enter into pre-application discussions, or to also provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
5. It is evident from the submissions before me that the planning application subject to this appeal, and the previously withdrawn planning application before it, have been the subject of a protracted period of determination. I appreciate that the Covid-19 lockdowns would have caused unexpected delays and I have some sympathy in respect of the health of the planning officer and their subsequent sickness leave. However, the applicants' evidence substantiates that they had endeavoured to contact the Council a number of times, over a long period of time, in order to provide necessary information.

6. The lack of a response from the Council resulted in the first application being withdrawn over a year after being validated. This significant delay, and the lack of a Council pre-application service, forced the applicants to resubmit an application to enable them to submit a 'non determination' appeal if the Council failed to determine it within the statutory timeframe. The second application was subsequently also not determined within the statutory timeframe.
7. The other stated pressures on the Council's resources to fulfil the obligation to determine the planning applications one way or another are acknowledged and are regrettable. However, the determination process is not linear and much of what the Council has alleged is not extraordinary. It should have been capable of much swifter action.
8. Furthermore, comments from the GMEU were only received at appeal stage, resulting in the applicants incurring further delay and costs to address these through the submission of revised evidence. There is little evidence before me of any attempts by the Council to chase up a consultation response from the GMEU during the course of the determination of either of the planning applications.
9. Notwithstanding the outcome of the appeal, the submitted chronology of events surrounding the appeal proposal demonstrates that unnecessary consequences for this appeal arose from clear deficiencies in collaboration, communication and also timeliness on the Council's part.
10. I therefore find that the Council has acted unreasonably and that the appellants' expense in mounting the appeal has been unnecessarily incurred. As such 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 other enabling powers in that behalf, IT IS HEREBY ORDERED that Bolton Metropolitan Borough Council shall pay to Mr & Mrs Gregory, the costs of the appeal proceedings described in the heading of this decision.
12. The applicants are now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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.

Mark Caine

INSPECTOR