
Costs Decision

Site visit made on 20 December 2022

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Costs application in relation to Appeal Ref: APP/A5270/W/22/3298609 66 Iveagh Avenue, London NW10 7DH

- 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 Faiza Ahmed (the Applicant) for a full award of costs against the Council of the London Borough of Ealing (the 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 described as the demolition of existing garage and erection of studio flat with bicycle storage, bin and refuse storage and private amenity space.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matters

2. In the interests of consistency and precision, and as referred to within the Appeal Decision and based on the evidence before me, I have amended the description of development as provided on the planning application to that as included in the banner heading above.
3. The costs application was submitted as part of the Applicant's appeal statement of case. The Council have been provided with an opportunity to respond to the costs application.

Reasons

4. Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Parties in planning appeals and other planning proceedings normally meet their own expenses.
5. In essence, the application for costs is made on the basis that the Council was unreasonable in failing to determine the application within the required period and failed to determine the application after an extension had been agreed with the Applicant, such that the Applicant was put to the cost of lodging an appeal against non-determination.
6. The PPG includes examples of unreasonable behaviour by planning authorities that may give rise to a procedural award of costs. Amongst other things, this can include, "delay in providing information or other failure to adhere to deadlines". The PPG further confirms 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. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period”.

7. From the evidence before me, whilst there appears to have been some communication with the Applicant, delays in determining the planning application do not appear to have been properly explained by the Council. Furthermore, it does appear that following a request by the Council for an extension, no decision on the planning application was made within the suggested timeframe. As such, the Applicant would have had no indication of when a decision might be forthcoming. The Council has failed to provide a statement of case that explains their reasons for not reaching a decision in a timely manner. I consider that these matters represent unreasonable behaviour on the part of the Council.
8. Turning to the issue of unnecessary or wasted expense, the failure by the Council to determine the application or provide a timescale for determination led directly to the Applicant submitting the appeal. The Applicant has, therefore, incurred expense in preparing their appeal documents. The Council's actions have meant that the Applicant has incurred unnecessary expense in the appeal process and an award of costs is justified.

Conclusion

9. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described within the Planning Practice Guidance, has been demonstrated and that a full award of costs in this instance is justified.

Costs Order

10. 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 all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Ealing shall pay to Mrs Faiza Ahmed the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The Applicant is now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Spencer-Peet

INSPECTOR