
Costs Decision

Site visit made on 29 November 2022

by L Douglas BSc (Hons) MSc MRTPI

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

Decision date: 26 January 2023

Costs application in relation to Appeal Ref: APP/N1730/W/21/3286799 The Bourne, Redlands Lane, Crondall, Farnham GU10 5RF

- 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 Dr and Mrs Adrian Williams for a full award of costs against Hart District 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 a three bedroom house with car port.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 applicant considers the Council acted unreasonably by not issuing a decision on the planning application following the agreement of 4 extensions of time due to delays in the Council obtaining legal advice. It is also claimed that the Council may have been unduly subject to pressure from another party and acted unreasonably by submitting a letter of complaint to the Planning Inspectorate in respect of a previous appeal decision¹ relating to the appeal site.
4. The Council has advised that it waited until the planning application was made valid by the applicant before legal advice was sought and that no evidence of wrong-doing with regard to the application has been submitted to support the applicant's claim that it was unduly subject to pressure from another party. The Council considered it appropriate to approach the Planning Inspectorate for a response to its concerns relating to the previous appeal decision prior to taking formal action.
5. The evidence indicates that the planning application was submitted in an invalid state on 13 July 2021 and made valid on 4 August 2021. The prescribed period for the Council to issue a decision expired on 29 September 2021. Based on the information provided, it appears that the applicant requested the agreement of an extension of time for a decision to be issued until 8 October 2021 for a legal

¹ APP/N1730/W/20/3264254

agreement relevant to the proposal to be completed, which had been sent to the Council's legal team for completion on 23 September 2021. The legal agreement was completed on 8 October 2021.

6. The evidence indicates that the applicant agreed to a second extension of time for the Council to issue its decision by 15 October 2021. On 15 October 2021 the applicant agreed to a third extension of time until 5 November 2021. On 4 November 2021 the Council advised the applicant that it had not reached a resolution as to whether to challenge the previous appeal decision, and therefore requested a fourth extension of time to issue a decision by 11 November 2021. The applicant agreed to the fourth extension of time. No decision had been issued when the applicant submitted the appeal on 12 November 2021.
7. The Council advises that it explained to the applicant's representative on the evening of 11 November 2021 that the application was due to be approved, but that the applicant's representative informed it that an appeal was ready to be submitted. It is not clear when the Council may have issued a decision, had the applicant not submitted the appeal.
8. The Council's submissions suggest that delays in issuing a decision were primarily due to it considering whether to formally challenge the previous appeal decision, which would have had implications for its decision on the application. The previous appeal decision was issued on 12 July 2021, and I note the Council submitted a complaint to the Planning Inspectorate concerning that decision by letter dated 20 July 2021. The typical period for a formal challenge to be made in respect of an appeal decision is 6 weeks from the day after the date of the decision. In respect of the previous appeal decision, that period expired some time before 29 September 2021.
9. The representations presented show the Council was aggrieved by the previous decision and it was not therefore unreasonable for it to submit a written complaint to the Planning Inspectorate prior to, or as part of, its consideration of a formal challenge. There is no evidence that the Council was unduly subject to pressure from another party when considering the planning application.
10. It was not unreasonable for the Council to seek legal advice as to how the application should be considered prior to issuing a decision. However, no reasonable explanation has been presented as to why the Council was unable to issue a decision within the second extension of time agreed, by 15 October 2021, considering the period to formally challenge the previous decision had expired. Although the Council has advised that it was 'on the cusp of approving the application' when the appeal was submitted on 12 November 2021, there is no evidence which demonstrates this was the case or that it was not unreasonable for the application to remain undetermined on that date.
11. The evidence presented convinces me that the Council acted unreasonably in not issuing a decision on the application by 12 November 2021. The applicant has explained that they had prepared for the appeal with their representative, so that it could be submitted without further delay if the council failed to issue a decision by the end of 11 November 2021. That was a logical approach following previous agreed extensions of time after 15 October 2021, and previous indications that the Council intended to refuse the application. I am therefore satisfied that the Council's unreasonable behaviour resulted in the applicant incurring wasted expense in the appeal process because the entire

appeal could have been avoided had it issued its decision within the second, third or fourth agreed extensions of time.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified

Costs Order

13. 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 Hart District Council shall pay to Dr and Mrs Adrian Williams, 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.
14. The applicant is now invited to submit to Hart District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Douglas

INSPECTOR