



Costs Decision

Site visit made on 15 December 2022

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Costs application in relation to Appeal Ref: APP/E5330/W/22/3298737 316 Bexley Road, Eltham SE9 2PN

- 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 Kemal Mustafa, Vertical Sunrooms Limited for a full award of costs against the Royal Borough of Greenwich.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for division of the land and change of use from garden outbuilding to a 1 bedroom dwellinghouse including car and cycle parking provision, waste storage provisions and associated landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (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.
3. The applicant contends that, correspondence with the Planning Officer confirmed that, had the application been determined within the statutory determination period it would have been approved under delegated powers. However, after the statutory period had passed, but prior to its determination, the application was "called in" by a Councillor, and it was subsequently presented to the Council's Committee in April 2022. The applicant states that the Councillor who "called in" the application disregarded evidence which was presented by the applicant as well as amendments which responded to their concerns.
4. In response, the Council state that the failure to determine an application within the statutory time period does not constitute unreasonable behaviour in itself. This is because the Council kept the applicant informed regarding the delays in the determination of the application and the applicant agreed to requests for extensions of time for its determination. Equally, local ward Councillors have the right to call an application into Committee at any time before an application is determined.
5. The PPG advises that if it is clear that the local planning authority will fail to determine the application within the time limits it should give the applicant a proper explanation. It says that 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.
6. I have seen no evidence that suggests the Council was particularly dilatory in considering the application. Whilst the proposed development is not large scale, there were genuine concerns from interested parties, and the Councillor. The evidence before me indicates that the Planning Officer kept the applicant updated on the progress of the application, and the involvement of the Councillor. The applicant confirms that they agreed to reasonable deadline extensions requested by the Planning Officers as these allowed opportunities to make minor amendments that would improve its likelihood of being granted planning permission. The decision of the Councillor to "call in" the application was a matter of judgement. The Councillor was entitled not to agree with the applicant's additional information or the professional advice of Officers so long as a case could be made for the contrary view.
 7. The applicant states that the Council's Committee went against the Planning Officer's report and recommendation that the application be approved. The applicant contends that the Committee's decision that the application should be refused, against the advice of professional officers, constitutes unreasonable behaviour and that the reasons for refusal given by Councillors at the Committee Meeting were vague, unsubstantiated and neither plan-led nor based on material considerations. The applicant states that they did not receive a decision notice nor were they provided the reasons for refusal in written form. Finally, the applicant notes that the Committee could have deferred the determination of the application and requested a site visit to inspect the on-site conditions.
 8. The evidence before me indicates that Committee Members were equipped with sufficient detail so as to come to a fully reasoned decision based on the assessment of the proposal in relation to its surroundings, having regard to relevant development plan policies. They subsequently resolved to refuse the application on the grounds of character and appearance and impact on neighbouring residents' living conditions. The Committee Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view. The applicant chose to submit an appeal against non-determination, before the Council had issued a formal decision notice which would have included the reasons for refusal. However, the reasons for refusal from the first Committee meeting were subsequently outlined in an addendum report when the application was reported to the Committee for a second time following the submission of the appeal.
 9. The applicant also contends that the Council originally agreed that the outbuilding had been constructed using permitted development rights, but later changed their position based on information provided by the Enforcement Team which brought the lawfulness of the outbuilding into question. The applicant suggests that, as a result, new reasons for refusal were introduced and the applicant's necessary response to these has resulted in unnecessary and wasted costs.
 10. The Council's second Committee Report sets out the additional evidence which they consider demonstrates that the structure is not lawful. Whilst there is disagreement between the two parties, I consider that sufficient detail was therefore provided to substantiate the Council's position.

11. The report for the second Committee sets out the reasons for refusal, which are complete, precise, specific and relevant to the development proposed, and detail the alleged harm and relevant local and national planning policies that the Council allege the proposal conflicts with. Although putting forward a contrary case to the first Committee Report, the Council's appeal statement subsequently elaborates on the refusal reasons, the Council's concerns with the appeal proposal and includes reasons why Members went against the recommendation of Officers at the first Committee meeting. Sufficient detail was therefore provided to substantiate its position.
12. The applicant states that they were required to spend time preparing additional final comments to respond to the Council's Statement of Case and Costs Application Response. However, this is not unusual for an appeal against non-determination which was submitted before the Council had issued its decision notice.
13. The applicant sets out that the Council's Planning Enforcement Team has failed to respond to their queries in relation to whether an enforcement case into the outbuilding had been closed. This costs decision considers the conduct of the Council in the determination of the planning application, and matters related to a separate enforcement case are outside the remit of this decision.
14. The applicant also states that the Council acted contrary to well-established case law which demonstrates that the outbuilding was lawfully constructed using permitted development rights. However, the decision is one which is a matter of judgement. The Council were entitled to take a contrary view, and the case for this was outlined in the Committee Report for the second Committee. As set out in the appeal decision, I have found that the available evidence indicates that there is a reasonable likelihood that the building is lawful. However, the appropriate route to confirm the lawfulness of the outbuilding would have been an application to the Council for a Lawful Development Certificate (LDC). This was not pursued by the applicant, and my determination of this appeal does not prejudice the Council's position were they to consider it expedient to take enforcement action alleging that the building was not lawful.
15. Overall, although I have come to a different overall conclusion and allowed the appeal, this does not mean that the Council acted unreasonably in refusing the planning application. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

B Pattison

INSPECTOR